

**SUPREME COURT OF SEYCHELLES**

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**Reportable/ Not Reportable / Redact**  
[2021] SCSC 211  
MA91/2019  
Arising in DV 152/2018

In the matter between

**AURELIEN TONY MONDON**  
*(rep. by Nichol Gabriel)*

**Petitioner**

and

**LUCINA AGNES MONDON**  
*(rep. by John Renaud)*

**Respondent**

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**Neutral Citation:** *Mondon v Mondon* (MA 91/2019 (Arising in DV 152/2018) [2021] SCSC 211 (20 April 2021).

**Before:** Carolus J

**Summary:** Matrimonial Property Settlement – Matrimonial Causes Act

**Heard:** 2<sup>nd</sup> March 2020 & 28<sup>th</sup> September 2020

**Delivered:** 20 April 2021

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**ORDER**

The respondent shall pay to the petitioner the sum of **Rupees Two Hundred and Thirty One Thousand Five Hundred (R231,500)**. The parties shall each bear their own costs.

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**JUDGMENT**

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**CAROLUS J**

**Background & Pleadings**

1. The Petitioner and the Respondent were married on the 23<sup>rd</sup> June 2009. Their marriage was dissolved upon the conditional order of divorce dated 28<sup>th</sup> November 2018 being made absolute on 18<sup>th</sup> January 2019.

2. The Petitioner has now petitioned this Court for a declaration that he is entitled to a half share of the matrimonial home of the parties situated on parcel S3256 at Anse Aux Pins, Mahe, and an order for the respondent to pay him for his share.
3. In his affidavit in support of the petition, the petitioner avers that he has contributed substantially towards the purchase of the matrimonial home located on parcel S3256 which is registered in the name of the respondent. He avers that he took a loan of Seychelles Rupees One Hundred and Thirty Three Thousand (SR133,000.00) from Barclays bank which was used for the purchase and renovation of the matrimonial home. He has been repaying the loan by monthly instalments of Seychelles Rupees Three Thousand Nine Hundred (SR3,900.00) and the loan repayments were done solely by him.
4. The petitioner claims that he worked throughout the marriage and earned revenue that was used to sustain both parties. He avers that he also did the cooking, cleaning, laundry, ironing, shopping and for the family as well as the gardening and general maintenance. He further contributed towards payment of the utility bills. He avers that he was the main contributor in the household.
5. He prays for the appointment of a Quantity Surveyor to assess the value of the matrimonial home; for an order directing the respondent to pay him a half share of the matrimonial home; and any other orders the Court deems fit.
6. The respondent opposed the petition. In her affidavit in reply she denied that the petitioner was entitled to a share of the matrimonial home and averred that it was built entirely at her own expense. She also denied that the petitioner made substantial contributions towards the purchase of the matrimonial home but admits that he has helped in renovating the house after they were married but claims that his contribution was limited to the sum of Seychelles Rupees Twenty Thousand (SR20,000.00).
7. She admits that the petitioner contributed to the household expenses jointly with her. As for his contributions to the housework and other duties associated with the household, she avers that this constitutes his share of such duties as the husband and member of the

household, especially in view of the fact that she went to work and he was mostly at home.

8. The respondent avers that the petitioner is not entitled to any payment in respect of the matrimonial home except for a contribution in respect of renovation of the house which she claims is not the matrimonial house.
9. She pays for dismissal of the petition with costs.
10. By Order dated 2<sup>nd</sup> March 2020, the Court appointed Mr. Jacques Renaud to carry out a valuation of the house situated on parcel 3256 at Anse Aux Pins as at 19<sup>th</sup> January 2019, including the movables (furniture), and to submit a valuation report to Court.

## **The Evidence**

### *Testimony of Aurelien Tony Mondon*

11. The petitioner lives at Anse Aux Pins. He testified that he is divorced from the respondent and produced the Certificate of Making Conditional Order Absolute dissolving their marriage (**Exhibit P1**).
12. He stated that he does not know the owner of the matrimonial property. He further stated that he had known the respondent two years prior to moving in with her. He moved in twelve years ago. At the time the house was not in the same condition as it is today: it was a brick house with two bedrooms and a kitchen, and the windows had louvre blades. After the marriage of the parties he and the respondent renovated the house. They partly demolished the house, added a master bedroom, fixed the verandah, replaced the louvre blades with sliding windows, installed sliding doors and changed the roof. The re-roofing was done by petitioner's cousins who are carpenters.
13. The petitioner stated that he took a loan of Rupees Forty Nine Thousand (R49,000) from Barclays Bank to finance the works which he repaid through salary deduction on a monthly basis. He stated that he also took several other loans after that which he is still repaying. He produced a bundle of bank documents (**Exhibit P2**) comprising of (1) bank statements of three loan accounts with Barclays Bank in his name in the sum of Rupees Forty Nine Thousand (R49,000) - account number 3004683, the sum of Rupees Sixty

Thousand (R60,000) - account number 3012146, the sum of One Hundred and Three Thousand (R103,000) - account number 3049768 and the sum of One Hundred and Thirty Three Thousand (R133,000) - account number 3021480, (2) an interim statement of account number 3021480 showing a balance of Rupees One Hundred and Five Thousand Four Hundred and Ninety Seven and Cents Sixty One (R105,497.61) as at 30<sup>th</sup> October 2018.

14. The petitioner stated that he also made two loan applications to the Financial Services Authority (“FSA”) where he was working at the time. He produced two letters from the FSA, one dated 29<sup>th</sup> May 2015 granting approval for a General Purpose Loan of Rupees Thirteen Thousand Two Hundred and Twenty Nine and cents one (R13,229.01) (**Exhibit P3**) and another dated 11<sup>th</sup> August 2017 granting approval for a General Purpose Loan of Rupees Fifteen Thousand (R15,000) (**Exhibit P4**). He stated that the purpose of the first loan was for house maintenance and the second loan was for house renovation, and that repayment of both loans was made by salary deduction and both loans were repaid in full.
15. He explained that the respondent had also taken a loan to finance the construction of the master bedroom but had run out of money and the reason he took the loan of Rupees Fifteen Thousand (R15,000) was to finance completion of the project. This included laying the tiles, doing the ceiling, completing the shower cubicles and installing the hand-wash basins. In addition he paid his brother Five Hundred Rupees (R500) to do the plumbing.
16. The petitioner stated that during the subsistence of the parties’ marriage from 2009 up to 2018, he did all the housework: he cleaned the house, cooked every day, cut the grass and cleaned the grounds, carried out regular maintenance of the house and painted the house every year. He claims that in their twelve years of marriage the respondent never once cooked and that whenever she came home from work the house was always clean and tidy and the food already cooked.
17. He claims that the parties have always shared the cost of the monthly grocery shopping which they did together. As for the utility bills normally the respondent would take care

of those but exceptionally the petitioner would pay them. Similarly she would normally buy the gas for cooking but if it ran out while he was cooking then he would buy it.

18. He testified that the parties do not have any children with each other, but that one of respondent's children who previously lived with them had moved out to go and live with his grandparents. Another child of the respondent who had recently been released from prison was now living at the matrimonial home.
19. The petitioner admitted that he knows that the land on which the matrimonial home stands belongs to another person but stated that he is only claiming his share of the expenses that he has made towards the house and the furniture during the past twelve years. He stated that he is still living in the house and he is prepared to move out if he is paid what he is entitled to. He claims that it is embarrassing for him to be still living there but that if he were to rent a house he would not have enough money to live on after the loan repayment is deducted from his salary. His salary and allowances together amount to Rupees Eleven Thousand Five Hundred (R11,500).
20. The petitioner admits that the respondent has contributed towards the house but stated that it came to the point where he had to take the loan which he then stated was used to finance respondent's trips to Dubai, South Africa and Bangkok to buy clothes which she then sold as a business so that they could repay their debts. Although the respondent had also taken a loan she had to make loan repayments of Rupees Four (R4000) to the bank, housing loan repayments of Rupees Two thousand (R2000), payments to the Small Business Enterprise of Rupees One Thousand (R1000) and monthly contributions of Rupees Five Thousand (R5000) to a game of "SIT" that she played. The petitioner states that most of the time he travelled to buy clothes to sell so that they could meet the loan repayments and their other expenses. He complained that sometimes clients also failed to pay them for the clothes they purchased. He stated that over and above the loan repayments which was deducted from his salary he also had to pay child maintenance for his own children. Furthermore the respondent also owed a lady Twenty Two Thousand Rupees (R22,000) for a sofa set which they had to pay for. Further expenses were incurred when they constructed the master bedroom.

21. The petitioner denied any knowledge that the respondent's previous husband had contributed to the house prior to the petitioner moving in as claimed by the respondent. As for the respondent's averment that he was not entitled to receive any payment except for renovation works on the house he replied that he is claiming what he contributed.
22. In cross examination the petitioner admitted that he and the respondent had broken up on 19<sup>th</sup> September 2016 and reconciled six months later. During their separation he lived in a container belonging to his brother at Providence for two months. After that he moved in with a woman at Petit Paris where he lived for another two months until he and the respondent reconciled. He admitted travelling to Thailand with the woman at around the time that the respondent was attempting to reconcile with him, sometime in February or March 2017. He denied having taken a loan just before going to Thailand and stated that it was the woman who paid their airfares, accommodation and expenses and that it was she who had taken a loan. They stayed in Thailand for a week but he could not recall the exact date of the trip.
23. He stated that while he was living with the respondent he had paid for certain items in the house but that when he left in 2016, he had taken a sofa set and a fridge that he had purchased with money from the loan he had borrowed. When they reconciled he returned the sofa set to the house. He had also purchased a dining table which is still at the house.
24. It was put to the petitioner that he left the house on 1<sup>st</sup> June 2017 for about a year and not 19<sup>th</sup> September 2016. He maintained that he left on 19<sup>th</sup> September. He had told the respondent that he would be working the night shift and but he returned to the house and met her with another man which is why he left. When it was further put to him that the allegation that he found his wife with another man was just an excuse for his leaving the house for a year, he maintained that the man was Ted Doudee who had just got of prison.
25. He also stated that when he moved in with the respondent he knew the house belonged to her. He did not ask her whether he could buy the items he bought for the house or repair the house but took it upon himself to do it since he was married to and living with her. He denied that all the repairs were paid for by the respondent. He stated that he knew she had taken a loan although he did not know the amount. He was asked whether he knew

that she spent the money obtained from the loan on renovating and repairing the house and responded that they had both contributed to the renovation and repairs.

26. He stated that a man by the name of Dancy worked on the ceiling but then left. The carpentry and masonry work was done by his cousins Bernard and Michael Mondon from Rochon. They uncovered the roof completely and did the re-roofing, worked on the ceiling and verandah and also laid the tiles. They only charged Rupees Ten Thousand Rupees (R10,000) because of their relationship to the petitioner. He paid them from contributions from both parties. The petitioner stated that he cannot put an exact figure to his contributions but that he has contributed a lot over the period of twelve years.
27. He could not say exactly how much he contributed monthly when the parties were living together as a couple because the respondent was responsible for tallying the money obtained from the clothes they sold, and sometimes that came up to Rupees Ten Thousand (R10,000) and other times Rupees Fifteen Thousand (R15,000). Sometimes it was less or more.
28. At the time, after deduction from his salary of the monthly repayments of Rupees Three Thousand Eight Hundred (R3800) for the Barclays Bank loan, Rupees One Thousand (R1000) for the loan he took from his employer as well as another Rupees One Thousand Two Hundred (R1200) he was left with around Rupees Five Thousand (R5000). Out of this he had to pay maintenance for his minor son which varied from Rupees Seven Hundred (R700) to Rupees One thousand (R1000) depending on whether he had worked overtime and the financial situation for that month.
29. He reiterated that the parties' other expenses included Rupees Four Thousand (R4000) and Rupees Two Thousand (R2000) for loan repayments, Rupees One Thousand (R1000) for the Small Business Enterprise and Rupees Five Thousand (R5000) for the game of "SIT" that the respondent played. The money that was earned from the clothing business was what covered these and their household expenses.
30. The petitioner agreed with respondent's counsel that he took the loan from Barclays Bank in 2013 for the clothing business. After further questioning he stated that he spent it on

the house. He then stated that he invested the money from the loans that he took both in the house and in the business. He explained that he could not recall exactly what each loan that he took was for because at times when the parties could not make ends meet they would agree to take an additional loan to get them back on their feet.

31. It was further put to him that he did not contribute any money to repairing the house, that if he did it would have only been a minimal amount, that the repairs were financed entirely by the respondent with the loan that she took from the bank and that the loans that he took was to finance his overseas trip with another person, all of which he denied.
32. The petitioner identified a document produced as **Exhibit D1** dated 1<sup>st</sup> March 2019 and signed by Police Constable Bradley Pierre confirming that the respondent handed over to him the sum of Rupees Twenty Four Thousand Five Hundred (R24,500) at the Mont Fleuri police station. He explained that he had obtained the money from the sale of the sofa set and lent it to her to travel to Sri Lanka with her sister, which he had then asked her to return.
33. It was put to him that he is exaggerating the amount of money the respondent owes him which could not have been more than Rupees Twenty Thousand. (R20,000). He replied that he could not give a total sum and would wait for the Court's decision.
34. In re-examination the petitioner confirmed that the return of the money to him as confirmed by **Exhibit D1** was effected after the parties divorce. He also confirmed that after he left the matrimonial home, the parties reconciled and he went back to live there and things continued as before. As to the game of "SIT" he stated that he did not participate in it and made no payments in that regard. However the parties did discuss as husband and wife what they would do with the Rupees Five Thousand (R5000) she got from that game.

*Testimony of Mr. Jacques Renaud*

35. Mr. Jacques Renaud is a Quantity Surveyor ("QS") with a BSc in quantity surveying and has practiced quantity surveying for the past thirty six years. He has worked as a private quantity surveyor for the past thirty one years. During his thirty six years as a QS he has prepared many valuations and QS reports which have been accepted by the courts.



36. He produced a valuation report prepared pursuant to an order of this Court dated 2<sup>nd</sup> March 2020 appointing him to carry out the valuation of a house located on parcel S3256 as at 19<sup>th</sup> January 2019, as **Exhibit P5**. However the house is stated in his report to be located on parcel No. S9966. Mr. Renaud appeared unsure as to whether the correct parcel was S9966 or S3256 but confirmed that in any event it is the house where the parties reside. I note that counsel for the respondent did not object to the production of the report on that basis or on the basis that the valuation of the wrong house was carried out. Mr Renaud also stated that he had made an error on page 5 of the report and wanted to replace that page with another representing the correct valuation. He explained that the original evaluation of Rupees One Million and Twenty Five Thousand (R1,025,000) for the house was incorrect. However in his revised calculation instead of adding, he subtracted thereby arriving at the correct value of the house namely Rupees Nine Hundred and Sixty Thousand (R960,000). This explanation was accepted by the court.
37. He testified that he first visited the site at Caryole, upper Anse Aux Pins, on 4<sup>th</sup> March 2020 with the petitioner and took photographs (appended to the report) and measurements. He then visited the site again this time in the presence of the respondent because the first time he had not been able to access the part of the house where the master bedroom is.
38. Although a valuation of the movable property was also requested by the Court, Mr. Renaud explained that this is not included in the valuation because he does not carry out valuation of the furniture but only values buildings.
39. He described the house as a three bedroom block house, plastered and painted, with corrugated iron roofing and measuring about one hundred and eight square metres. It was originally a two bed-room house which was subsequently renovated and upgraded, and a third master bedroom with en suite bathroom and dedicated veranda added. The house was still in the process of being upgraded and improved and therefore works after the site visit were not taken into account in the valuation. Retaining walls and external works were also excluded.

40. In cross-examination Mr. Renaud was asked whether he was able to determine when the house was built. He stated that he doesn't remember but usually he examines a house and estimates when it was built. In the instant case he believes he asked the petitioner but does not remember whether he also asked the respondent. He explained that although he had requested that they both be present when he was organising the site visit, the respondent could not be present and had indicated that he should carry out the site visit with the petitioner. Hence the first site visit of the main part of the house was carried out solely in the presence of the petitioner, while only the respondent was present at the second visit when the master bedroom was examined. However Mr. Renaud discussed generally with the respondent what went on at the first site visit. Although he was not able to state exactly when the house was built, Mr. Renaud stated that in its renovated state he estimated that it was equivalent to a house of around thirteen years although he admitted that he was probably guided by the parties in that respect but he could not be sure.
41. Mr. Renaud confirmed that thirteen years ago the house had two bedrooms but that now a third bedroom has been built. He stated that he spoke to both parties and gathered from these conversations that the respondent had originally built the house. The petitioner had further indicated that he then moved in with her and participated in the renovation and extension of the house. He does not know when the petitioner moved in.
42. Mr. Renaud was asked whether he was able to identify areas that were built after the petitioner moved in the house. He replied he was guided by the petitioner when he was taking measurements but that there were also clues consistent with what petitioner claimed was done after he moved in. When pressed as to what those were, he stated that there were many things but that the petitioner would point out things generally and that such matters were not included in his notes which were confined to things such as measurements.
43. He confirmed that he was unable to state the contribution of the petitioner towards the building of and repairs to the house, and that he was only able to assess its value.

44. In re-examination Mr. Renaud stated as per the Court Order he was asked to carry out a valuation of a house situated on S3256 (which he stated was probably a wrong plot number), at Anse Aux Pins and occupied by the plaintiffs.

*Testimony of Lucina Agnes Riaze*

45. The respondent Lucina Agnes Riaze lives at Anse Aux Pins. She stated that she has known the petitioner for the past twelve years and that they were colleagues at the Prison Services when they fell in love and started dating. At the time the petitioner was living at Rochon with his previous wife. When the petitioner and his ex-wife separated, the petitioner moved in with the respondent at her place at Anse Aux Pins at around the year 2005 or 2006. That was after the parties had dated for about three years.
46. When petitioner moved in the house was a concrete house with two bedrooms which had been built by respondent's husband at the time namely Roch Anthony.
47. She confirmed that the relationship between herself and the petitioner lasted 12 years.
48. She admitted that the petitioner helped her with some renovation to the house during the time that they co-habited. She insisted that he had helped with renovation and not building the house as the house already existed when he came into her life.
49. She stated that she then built a master bedroom which was financed by a loan of Rupees One Hundred Thousand (R100,000) she borrowed from the Housing Finance Company. Repayment of the loan was through monthly deductions from her salary over a period of five years and she is due to finish repaying the loan next year. The respondent further stated that she and the petitioner broke up and he moved out to live with another woman for about a year but that they reconciled and he moved back in with her. She admitted that when he came back he took a loan although she does not recall the amount and that he assisted her with the purchase of and installation of sliding doors for the master bedroom. She specified that the sliding window was already installed at the time and that his only contribution was for the sliding doors.
50. The respondent was asked whether the petitioner had ever asked to refund the money he had spent on her house. She replied that around May 2019 the petitioner had told her that

he wanted to move out of her life. She told him that her two yearly gratuity was due, and he told her to pay him Rupees Thirty Thousand (R30,000) and he would leave. She got the money on 2<sup>nd</sup> May 2019. She withdrew the money from her bank account and they went to Anse Aux Pins police station for the police to witness her handing over the money to him which the police officer declined to do. They took a “taxi pirat” to Mont Fleuri police station where a police constable agreed to witness the transaction. The money was counted in front of him and respondent handed over Rupees Twenty Four Thousand Five Hundred (R24,500) to the petitioner keeping Rupees Five Hundred (R500) to cover the “taxi pirat” fees. This was recorded in the occurrence book. When the matter came to court she requested a document from the Commissioner of Police certifying that the transaction had taken place and was given Exhibit D1 signed by Police Constable Bradley Pierre and dated 1<sup>st</sup> April 2019. However even if the petitioner was paid the money he refused to leave the respondent’s house and only left three months ago and hasn’t returned since.

51. The respondent claimed that during the time they were living together the petitioner did help for example to paint the house and to buy things needed for the house. He also helped with completing the master bedroom as she previously stated.
52. She further stated that when the petitioner’s wife left him he was still living with his children in the house he and his wife had rented together, and she left with everything. The respondent helped him and bought plates, cutlery, an iron, a kettle and everything that they needed. When he moved in with her he came with nothing: his salary was low, he had a big loan he had just taken from his ex-wife, he was a heavy smoker and he also had alimony to pay. After that they started to build their life together and the petitioner contributed to their monthly expenses.
53. She could not identify any part of the house that the petitioner financed on his own. She stated that they did everything together although she financed mostly everything. She claimed that when he moved in there were only louvre blades and ordinary doors in the living room in the main house. She later replaced them with sliding doors and windows at her own cost. As for the kitchen and dining room, they also used to have louvre blades

and ordinary doors which were damaged in 2014 by bad weather and it was the Government who paid for sliding doors and windows to be installed.

54. Later in her examination in chief the respondent again stated that the sliding doors and windows in the living room were paid for by herself while petitioner was “in her life” but then admitted that they did it together.
55. When she was asked by counsel whether the petitioner should get some money for what he had spent in upgrading her house, she stated that he should not because he was “there in [her] life” but that if the court decided that he deserved to be awarded something she would abide with the court’s decision.
56. The respondent testified that when she refunded the petitioner the sum of Rupees Twenty Four Thousand Five Hundred (R24,500), their original arrangement had been for her to pay him Rupees Thirty Thousand (R30,000). Consequently when he was travelling overseas she withdrew a further Rupees Two Thousand Five Hundred (R2500) to give him.
57. The respondent pointed out that the valuation of the house for the sum of Rupees Nine Hundred and Sixty Thousand (R960,000) was for the whole house and not only for the repairs or construction of the part of the house she had carried out together with the petitioner. She further stated that the valuation included certain external works such as drainage and external services but pointed out that all this existed when the petitioner moved in and only the drainage for the master bedroom was done after.
58. In cross-examination the respondent confirmed that the photographs in Exhibit P5 - the valuation report - did not reflect the house as it was when she married the petitioner on 23<sup>rd</sup> June 2009. She stated that when they got married there was no master bedroom. She agreed that there was no separate valuation for the master bedroom in the report.
59. She agreed with petitioner’s counsel that the house was partly damaged in a storm in 2014, following which the kitchen and dining room had to be rebuilt. She reiterated that Government rebuilt the two rooms.

60. She further agreed with counsel that the petitioner contributed to the extension of the house which consisted in the addition of the master bedroom. She stated that he contributed by supplying the sliding doors and windows.
61. She confirmed that from 2009 until 2019 when the parties were living together, the petitioner made contributions other than material ones, for example he assisted in managing the household. She denied that he maintained the house and did the cleaning, cooking, laundry and ironing for the family, and claimed that she did the laundry and ironing. When her attention was drawn to paragraph 7 of her affidavit in which it she averred that these duties constituted the responsibility of the husband, she maintained that he did not do these things and therefore she could not admit that he did them.
62. She admitted that the petitioner took one loan from Barclays. With respect to the loans from SIBA, she explained that irrespective of the purpose of any loan that employees of SIBA applied for from SIBA, such loan was referred to as a General Purpose Loan. She stated that the petitioner used the money obtained from the loan that he took from SIBA to go to Thailand at the time that she gave him the Rupees Thirty Thousand (R30,000). She knew about it because they were communicating at the time. She denied that he spent the money on the house.
63. As for the loan taken from Barclays Bank she stated that even if he took the loan he did not spend it with her. She stated that he is repaying his loan just as she is also repaying a huge loan she borrowed from Barclays Bank.
64. Counsel pointed out that in reply to the petitioner's averment at paragraph 4 of his affidavit that he took a loan of Rupees One Hundred and Thirty Three Thousand (R133,000) which was used for the purchase and renovation of the matrimonial home, the respondent had stated in paragraph 4 of her affidavit that the petitioner had helped in renovating the house after they were married for his own advantage but that his contribution was limited to Rupees Twenty Thousand (R20,000), and queried how his contribution could be so little given the amount of the loan. She explained that when a person takes a loan without having completed repayment of a previous loan, the amount outstanding on the previous loan is added to the amount of the new loan so that the

balance for the new loan is higher than the money actually received by the borrower. She denied that the loan which the petitioner is still repaying was for the house.

65. In reply to whether a bank would give a loan without knowing the purpose for the loan she stated that with Barclays a person just makes a loan application: they do not have to specify that it is for construction purposes.
66. She admitted that the money obtained from the last loan of R133,000 taken by the petitioner was what was spent on the sliding doors and windows and the master bedroom. She stated that he helped and denied saying that he never helped.
67. Respondent stated that during the time the parties were married both of them were employed and that they pooled their resources to maintain their family.
68. She maintained that she gave the petitioner Rupees Twenty Four Thousand Five Hundred (R24,500) because he had asked her for Rupees Thirty Thousand (R30,000) for him to get out of her life and move on. It was put to her that surely a marriage of ten years is worth more than that. She replied that this is the sum he asked for.
69. The respondent maintained that when the petitioner moved in with her, her house had been built and that therefore the only share he is entitled to is his contribution to the renovation works. It was put to her that although he may not be entitled to a share of the house itself he is entitled to some money and she replied that this is up to the court to decide. She was asked whether that meant she agreed that he was entitled to a share to which she replied that the petitioner was in her life and that if the court determines that he is entitled to something then she will pay him.
70. In re-examination, the respondent was asked whether she knew why the petitioner went to Thailand. She explained that she used to run a little business where the parties would buy items from overseas to sell in Seychelles but that she has closed down that business for a while now. At the time the petitioner went to Thailand he was not in a relationship with the respondent and went there with someone else to buy things for him to sell when he came back. The reason he had asked her for the money was so that he could sell the items he had purchased in Thailand and have some money to move on with his life.

71. Counsels for both parties were invited to make submissions which they both declined.

### **Analysis**

72. The petitioner seeks a declaration from this court that he is entitled to a half share of the matrimonial home situated on parcel S3256 at Anse Aux Pins, Mahe, and an order for the respondent to pay him the value of such share. He does not claim any share in the land on which the matrimonial home stands.

73. The respondent opposes the petitioner's claim and in her affidavit avers at paragraph 4 that "... *the Petitioner has helped in renovating the house situated on Parcel No. 3256 after they were married ... the contribution of the Petitioner (sic) financial assistance was limited to R20,000.*" and at paragraph 9 that "... *the Petitioner is not entitled to receive any payment in respect of the home save a contribution in respect of the renovation of the house which was not the matrimonial house.*"

74. The applicable law is section 20(1)(g) of the Matrimonial Cause Act Cap 124. It 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.*

75. I note that although in his petition and supporting affidavit the petitioner refers to parcel S3256 as the land on which the house stands, and the respondent does the same in her affidavit in reply, the Quantity Surveyor in his report refers to parcel S9966 which he states is the land on which the house where the parties live is situated. It is regrettable that



neither counsel sought to clarify or to adduce evidence as to which of the two parcel numbers was the correct one. In the circumstances the court finds itself unable to determine the same. However given that the petitioner is not seeking a share in the land, and neither party have objected to the report on the basis that the house that was valued by the quantity surveyor and which is the subject matter of his report, is not the house which the parties lived in during the subsistence of their marriage, I will proceed on the assumption that the said house is the house subject matter of the present petition.

76. Although the petitioner avers in his affidavit that he has contributed substantially towards the purchase of the matrimonial home, the evidence on record reveals that the house was built and the respondent was living in it, prior to the parties even entering into a relationship, and that the petitioner only moved in after the house had been built. The petitioner himself testified that he moved in with the petitioner. Further the quantity surveyor stated that he estimates that the house dates back thirteen years. Taking into account that the valuation was carried out in March 2020 this means that the house existed as far back as March 2007. The petitioner stated that he moved in with the respondent twelve years ago which takes us to 2008. The respondent's testimony is that she has known the petitioner for the past twelve years and that he moved in with her after they had dated for about three years that is, around 2011. Although there is a difference of about three years in the parties' recollection of when the petitioner moved in, it is evident that he moved into an existing house which he had not contributed in purchasing.
77. Consequently any share that the petitioner would be entitled to, would be for his contribution to works performed on the existing house after he had moved in with the respondent up until the time he moved out. In that respect the petitioner stated that works on the house started after the parties married in 2009. Although it is clear from the respondent's testimony that works commenced after the respondent moved in she does not state exactly when. Given the discrepancies in the parties' recollection of when the petitioner moved in the house, for the purposes of determining the contribution of the petitioner to works performed on the said house, this court will consider the date of commencement of such works to be 2009, as stated by the petitioner.

78. The respondent claims that the house in question is not the matrimonial home of the parties. It is clear from her testimony that she holds that view because the house was built and she was living in it, prior to the commencement of her relationship to the petitioner. She testified that she built the house herself with the assistance of her ex-husband. In **Boniface v Malvina (SCA 41/2017 [2020] SCCA 11 (21 August 2020))**, the Court of Appeal stated –

*11. ... Thirdly, it is not necessary to identify whether the property is ‘matrimonial property’ for the purposes of applying the MCA. Section 20(1)(g) of the MCA states:*

*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.*

*12. The Court thus should not refer to ‘matrimonial property’ but simply “property of a party to a marriage’. In the same regard it matters not whether the property was bought by the Respondent before the marriage. The house in the present case clearly falls within the scope of the MCA, and can be subject to a property order following the breakdown of the marriage.*

79. This Court therefore has to determine: firstly the works that were performed on the house after the petitioner moved in; secondly his contribution thereto; and finally his contribution generally to the living and household expenses of the parties.

#### *The Works*

80. It is not disputed that after the petitioner moved in the house, renovations to the existing structure was carried out and a master bedroom with ensuite bathroom was constructed.

81. The petitioner claims that the house originally consisted of two bedrooms and a kitchen and the windows had louvre blades. The renovation consisted of fixing the verandah, replacing the louvre blades with sliding windows, installing sliding doors, changing the roof, carrying out works on the ceiling and laying tiles. A master bedroom was also added.
82. The respondent on her part focused on works that the respondent had contributed to, which she claims was limited to the sliding doors and windows although there are discrepancies in her testimony as will become apparent later in the discussion.
83. According to the valuation report the house was originally a two bedroom house later renovated and extended with addition of a master bedroom with en suite bathroom and a dedicated veranda. It is still in the process of renovation and improvements. The building now comprises the master bedroom with en suite bathroom, living room/ kitchen/ dining room, bathroom/toilet, corridor, two verandas and an open patio. The roof is in pre-painted zinc/alum alloy roof sheeting with timber structure. As for the doors and windows, the veranda doors and windows are aluminium and there are some external and internal plywood flush/panel doors as well as adjustable glass louvres with timber frames. The master bedroom has aluminium windows.
84. The valuation report together with the photographs appended thereto shows that extensive works were carried out on the original structure of the house. In my view this led to an appreciation in the value of the house in its current state. What remains to be seen is the contribution of the petitioner thereto.

*Contribution of the Petitioner to Renovation and Extension Works on the House*

85. The petitioner contends that both he and the petitioner contributed to the renovation of the house and the construction of the master bedroom and that although he cannot put an exact figure for his contributions, they were substantial. The respondent has also admitted that the petitioner assisted with the renovation of the house.
86. Although in his affidavit the petitioner only makes reference to a loan of R133,000, he has produced documentary evidence (Exhibit P2) of three loans borrowed from Barclays Bank (in the form of bank statements) and two from SIBA (letters of approval for the

loans) which he claims were used in financing the works on the house and which were repaid solely by him.

87. With regards to the Barclays Bank loans, the loan account for the first loan (account no. 3004683) is in the name of the petitioner, and the loan in a sum of R49,000 was disbursed on 28<sup>th</sup> September 2010. Immediately after the entry in the statement showing that on 28<sup>th</sup> September 2010, a loan of R49,000 was disbursed, there is an entry in the statement "LOAN 10 4087159". Monthly repayments in the sum of R1412.37 were made by way of standing orders from 26<sup>th</sup> October 2010 to 26<sup>th</sup> June 2012 and a final payment of R37,173 was made on 13<sup>th</sup> July 2012 closing the loan account.
88. The second loan (account no. 3012146) also in the name of the petitioner was for the sum of R60,000 and disbursed on 13<sup>th</sup> July 2012 (the same date that the final payment was effected for the first loan and the account for that loan closed). As with the first loan, the entry in the statement showing disbursement of the sum of R60,000 is followed by an entry "LOAN 10 4087159". Monthly repayments in the sum of R1.721.66 were made from 1<sup>st</sup> August 2012 to 15<sup>th</sup> December 2015 and a final payment of R23,888 was made on 17<sup>th</sup> December 2015 closing the loan account.
89. The third loan (account no. 3021480) also in the name of the petitioner was for the sum of R133,000 and disbursed on 17<sup>th</sup> December 2015 (the same date that the final payment was effected for the second loan and the account for that loan closed). As with the previous loans, the entry in the statement showing disbursement of the sum of R133,000 is followed by an entry "LOAN 10 4087159". The statement shows monthly repayments in the sum of R3.809.12 from 20<sup>th</sup> April 2017 to 23<sup>rd</sup> April 2018 with an outstanding balance of R113,801 as at that date. The interim statement dated 5<sup>th</sup> October 2018 for loan account no. 3021480 (for the third loan) shows monthly repayments in the sum of R3,809.12 from 21<sup>st</sup> May 2018 to 20<sup>th</sup> September 2018 with an outstanding balance of R105,487 as at that date.
90. I note that the dates for the final payment for the first loan and the closure of the loan account relating thereto coincide with the date of disbursement of the second loan, and that the disbursement of the 3<sup>rd</sup> loan was effected on the same date that final payment was

effected for the second loan and the account for that loan closed. Coupled with the fact that the entry “*LOAN 10 4087159*” appears in the statements relating to all three loans, this tends to show that all three loans are related. Together with the fact that the final payments for the first and 2<sup>nd</sup> loans were not paid by standing order, this lends credence to the respondent’s claim that where a borrower has not repaid a loan in full and wishes to borrow more money, a second loan (and in this case even a third loan) is granted and sums outstanding under the first loan is repaid from money lent to the borrower under the subsequent (second or third) loan.

91. However the respondent claims that the practical effect of this is that the amount outstanding is added on to the new loan which appears as the sum disbursed in the statements but the borrower actually receives a lesser sum i.e. the sum disbursed less the balance outstanding on the previous loan. I cannot subscribe to this view firstly because the statements relating to the first and second loans show a closing payment which covers the outstanding balance of the loan and interest which brings the loan balance to 0.00 and the account is stated to be closed. Further the amount brought forward for the subsequent loans (the second and third loans) is also 0.00. To my mind, there is nothing to show that the sums in the statements representing the loan disbursed are not the sums actually received by the borrower, in this case the petitioner. I therefore find that he did receive the sums of R49,000, R60,000 and R133,000 respectively. I also find no reason to doubt that the repayments were made solely by the petitioner through deductions from his salary in light of the statements showing they were made on a monthly basis mainly by means of standing orders.
92. I find it apt at this stage to comment that the onus is on a party to prove any claims or averments that he or she makes. Where this involves technical matters it is up to that party to bring expert evidence to explain matters which might be beyond the court’s knowledge or understanding.
93. As previously stated the petitioner only makes reference to the loan of R133,000 in his affidavit which he averred was used for the purchase and renovation of the house but produced statements relating to three loans in the sums of R49,000, R60,000 and

R133,000 respectively which I have found were disbursed to him. I note that the statements do not show the purpose of such loans. However it appears from various parts of the petitioner's testimony that the loans that he took were not used solely for works on the house. He admitted that money from the loans were also used to finance the clothing business of the respondent so that the money earned from that business could be used to pay for their expenses and debts which also included loan repayments (See paragraphs 20 and 30 above). He also stated that he purchased a fridge and sofa set from the money obtained from the loans (See paragraph 23 above).

94. The money obtained from the loans, on the petitioner's own admission, not having been used solely for the purpose of renovating and upgrading the house, it is difficult for the Court to determine the proportion of this money which was used for that purpose. In the circumstances it would be unfair to make a finding that the totality of the money obtained from those loans were used to fund the renovation and extension of the house. I therefore hold that 75% of the total money obtained from the three Barclays Bank loans were contributions of the petitioner to the renovation of the house as well as to the expenses of the parties which are related to their household.
95. As for Exhibits P3 and P4 purporting to be evidence of loans borrowed by the petitioner from SIBA when he was employed by that authority, I observe that these are simply letters communicating to the petitioner approval for his applications for General Purpose Loans. They are not evidence that such loans were actually disbursed. Further although the petitioner has testified that these loans were for house maintenance and renovation, the letters only show that that they are General Purpose Loans. I therefore decline to take into account these loans.
96. The respondent also claims that the respondent took a loan to travel to Thailand with another woman when the parties had broken up and the petitioner was co-habiting with that woman. The petitioner claims that they broke up on 19<sup>th</sup> September 2016 and reconciled in February or March 2017 and that in any event it was the other woman who bore the expenses for the trip. The respondent on the other hand contends that the petitioner left their home on 1<sup>st</sup> June 2017 and only returned a year later. Whether the

petitioner left the household in September 2016 or June 2017, I note that the third and last Barclays Bank loan was disbursed on 17<sup>th</sup> December 2015, way before either dates. I therefore do not find that the loans from Barclays Bank were used for that purpose.

97. The respondent has further claimed that she also took a loan of R100,000 from the Housing Finance Company to finance the construction of the master bedroom. She also testified that she has also taken a loan from Barclays Bank which she is still repaying. She has brought no documentary evidence of either of these loans but I note that the petitioner admitted in his testimony that the respondent had taken a loan to finance the building of the master bedroom which he supplemented with the loan of R15000 from SIBA to complete the project because the respondent's money ran out. He also testified that the respondent had taken a loan for which she had to make monthly repayments of R4000, and a housing loan for which she had to make repayments of R2000. However no information was given and no documentary evidence adduced as to the amount of these loans. Although the respondent has testified that she financed mostly all the expenses related to the renovation and extension of the house she has not brought any concrete evidence of the same. However I do believe that she also contributed substantially to the renovations and extension to the house.
98. I must say that the respondent does not strike me as a particularly reliable witness. She is inconsistent in her testimony and her affidavit evidence is at times at variance with her testimony in court. The most obvious example is the petitioner's contribution to the construction of the master bedroom. In her affidavit she states that the petitioner is entitled at the most to R20,000 for his contributions to the renovation of the house. In her testimony she first states in examination in chief that the petitioner assisted only with the purchase and installation of the sliding doors. She specifically stated that she had already installed the sliding windows and that his only contribution was for the sliding doors. In cross-examination she stated that that the petitioner contributed by supplying both the sliding doors and windows. Upon further cross-examination she further admitted that the money obtained by the petitioner from his last loan from Barclays Bank was spent on the sliding doors and windows as well as the master bedroom. Similarly in examination in chief she stated that she paid for the sliding doors and windows in the living room but

later relented and admitted that the parties did it together. I take that to mean that they both contributed thereto.

99. In view of the above, I find that both parties contributed to the renovation of the original house and to the extension thereof by the construction of the master bedroom with en suite bathroom and a dedicated verandah. However, other than the three loans borrowed by the petitioner from Barclays bank in the sum of R49,000, R60,000 and R133,000 there is no concrete evidence of any other contributions by either of the parties.
100. Furthermore the court is only in the presence of a valuation of R960,000 for the house as at the 19<sup>th</sup> January 2019. It would have assisted the Court greatly to also have a valuation of the house prior to the renovation and extension works thereon or a separate valuation for at least the master bedroom. It is unfortunate that this was not done. In the circumstances the Court has no option but to rely on the proven expenses of the petitioner namely the loans borrowed by him from Barclays Bank, of which I have found only 75% was used for renovation and extension of the house.
101. The petitioner has also testified that he is also claiming his expenses for the furniture in the house. In the absence of any evidence as to the furniture contained in the house or their value, the court finds itself unable to make any determination as to the same. Further the same is not claimed by the petitioner in his pleadings.
102. The respondent has further produced documentary evidence of payment of the sum of R24,500 (Exhibit D1) to the petitioner which she testified is a refund for his contributions to the works on the house. The petitioner claims that this was a refund of money he had lent the respondent. There is no evidence to substantiate that the payment was for the purpose claimed by either party. I cannot therefore find payment of that sum was for either of those purposes. The respondent's claim that she also paid the petitioner the sum of R2,500 for the same purpose is also unsubstantiated and therefore cannot be considered by this court.
103. In view of the above, I find that the petitioner has contributed to the renovation and extension of the house in the sum of **Rupees One Hundred and Eighty One**



**ThousandFive Hundred (R181,500)** being 75% of the total sum of the loans of R49,000, R60,000and R133,000 borrowed by him.

*Contribution of Petitioner to household duties and expenses*

104. In the case of **Charles v Charles (CA01/2003) [2005] SCCA 13 (22 June 2005)**the Court of Appeal stated that 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 the relevant factors. It is in that light that I also consider the contributions of the parties towards household duties and expenses

105. I am satisfied that both parties contributed more or less equally to the household duties and the expenses associated with the household, bearing in mind that both of them were in employment throughout their marriage. I do not believe that either one of them contributed substantially more than the other in that respect. I therefore find that the sum of **Rupees Fifty Thousand (R50,000)**is a reasonable assessment of the petitioner's contribution to the household duties and expenses over the ten year periodof the marriage of the parties

**Decision**

106. Bearing in mind that the house was already built when the petitioner moved in with the respondent and that his contribution was towards the renovation and extension of an existing house which has been valued at Rupees Nine Hundred and Sixty Thousand as at 19<sup>th</sup> January 2019; and further taking into account the petitioner's contributions as the husband of the respondent to the household duties and expenses, I assess the petitioner's share to be the sum of **Rupees Two Hundred and Thirty One Thousand Five Hundred (R231,500)(R181,500 + R50,000)** which sum the respondent shall pay to the petitioner.

107. The parties shall each bear their own costs.

Signed, dated and delivered at Ile du Port on 20April 2021.

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Carolus J