

SUPREME OF SEYCHELLES

Reportable

[2022] SCSC1084...

MA 74 of 2021

Arising in DV 196/2019

In the matter between:

ANDRYA LYNN LOUISE
(rep. by *Serge Rouillon*)

Petitioner

and

MERVIN DICK
(rep. by *Karine Dick*)

Respondent

Neutral Citation: *Louise v Dick* (MA 74 of 2021 arising out of DV 196 of 2019) [2022] SCSC1084 (.....7..... December 2022).

Before: Pillay J

Summary: Divorce – Matrimonial Property Adjustment

Heard: 11th October 2021 and 29th October 2021

Delivered: 7th December 2022

ORDER

[1] I accordingly find and order as follows:

- (i) the Petitioner's share in the matrimonial home shall be 80%;
- (ii) the Respondent's share in the matrimonial home shall be 20%;
- (iii) the Petitioner shall pay the Respondent the sum of SCR 279, 000.00 within six months of today's date whereupon the Respondent shall vacate the property,
- (iv) in the event the Petitioner fails to make payment as above the Respondent shall pay the Petitioner the sum of SCR 1, 116, 000.00 within six months of the Respondent's failure to pay, following which the Petitioner shall transfer the property to the name of the Respondent.

SUPREME OF SEYCHELLES

Reportable

[2022] SCSC 1084.....

MA 74 of 2021

Arising in DV 196/2019

In the matter between:

ANDRYA LYNN LOUISE

(rep. by Serge Rouillon)

Petitioner

and

MERVIN DICK

(rep. by Karine Dick)

Respondent

Neutral Citation: *Louise v Dick* (MA 74 of 2021 arising out of DV 196 of 2019) [2022] SCSC (..... May 2022).

Before: Pillay J

Summary: Divorce – Matrimonial Property Adjustment

Heard: 11th October 2021 and 29th October 2021

Delivered: 7th December 2022

ORDER

[1] I accordingly find and order as follows:

- (i) the Petitioner's share in the matrimonial home shall be 80%;
- (ii) the Respondent's share in the matrimonial home shall be 20%;
- (iii) the Petitioner shall pay the Respondent the sum of SCR 279, 000.00 within six months of today's date whereupon the Respondent shall vacate the property,
- (iv) in the event the Petitioner fails to make payment as above the Respondent shall pay the Petitioner the sum of SCR 1, 116, 000.00 within six months of the Respondent's failure to pay, following which the Petitioner shall transfer the property to the name of the Respondent.

- (v) In the event that neither party pays the other as above, the property shall be sold and the proceeds of the sale shall be distributed as above.

[2] Given that this is a family dispute each side shall bear their own costs.

JUDGMENT

PILLAY J

- [1] The Petitioner applies to this Court for an order for final division of the parties' matrimonial property Title J3976 and the house and improvements made thereon, in particular to declare the parties' respective shares in the said matrimonial property.
- [2] The Respondent contested the application and prayed that the Court dismisses the application. He further prayed the Court to declare that he has a half share in the property or alternatively declare what his share is.
- [3] The parties were married on 19th November 2011. A conditional order of divorce was granted on 28th February 2020 subsequently made absolute on 26th May 2020.
- [4] In summary, the Petitioner deponed that both herself and the Respondent entered into a promise of sale to purchase J3976. Her parents lent her SCR 30, 000.00 and she put in the remaining SCR 20, 000.00 to cover the deposit. They opened a joint bank account in order to take a loan to purchase the property. Before they could purchase the property they separated on 26th December 2016. She took only her personal belongings leaving behind the furniture and appliances that they had bought together. She decided to continue with the purchase of J3976 by herself taking a loan in her sole name. The property was in a dilapidated state. She bought toilets, washbasins and cement. She stored them in the house until she could do the repairs. Mid 2017 the Respondent approached her and she agreed to allow him to reside in the house on condition he undertook some work on the property, cutting the bushes and keeping an eye on the property and leave once he got a job. At some

point after the purchase of the property, round June 2018, the parties reconciled and lived in the property together for a month. Since then the Respondent has refused to vacate the property. She asked counsel to write him a letter to vacate the property and had the water and electricity disconnected. She paid for the loan until February 2021 when the Respondent started contributing to the loan repayments.

- [5] In cross examination she stated that the Respondent paid one Shairo Valentin a sum of SCR 20, 000.00 as agent. This Shairo Valentin was also the one who handed over the keys to the house. Each party was given a set of keys after the promise of sale was signed in 2016.
- [6] John Hoareau the Petitioner's father testified that he lent the Petitioner the sum of SCR 10, 000 to start the procedures for the loan to purchase the property.
- [7] Jacqueline Lesperance the Petitioner's mother testified that she lent her daughter SCR 20, 000 cash when her daughter approached her and sought her assistance to purchase the property. It was her evidence that her daughter was unable to refund the amount to her so it is as if she gave her daughter a gift.
- [8] The Respondent deponed that he has been living at Bel Ombre for 5 years. He is currently living in the house located on the property J3976 which consisted of a dilapidated two bedroom house which is solely registered in the name of the Petitioner. Himself and the Petitioner found the house and visited the house in the company of one Sharoy who was acting as there agent. Himself and the Petitioner made an application for a housing loan at Barclays Bank in 2016. They had to open a joint account in order for them to apply for the loan. That same week the Petitioner and Respondent separated. After the sale the Petitioner informed him that she had changed the application. Their marriage at that point was not 100% maybe 50%. They were not thinking of getting a divorce so they entered into an agreement whereby the Petitioner would pay the loan and the Respondent would take care of the renovation of the house.
- [9] It was the Respondent's evidence that he paid SCR 50, 000.00 to one Sharoy who was acting as their agent in the purchase. He borrowed the money from his boss at ISPC who gave him the money in cash. On same day both him and the Petitioner received a set of

keys. On 26th December 2016 the Petitioner left the rented accommodation they were in. In January 2017 he decided to move into the property as he had a key. He went with the Petitioner to purchase the tiles and basin. Two guys came to do the work but when he saw that their work was not good he called the Petitioner and told her those guys should not come anymore. They paid the two guys SCR 3000 and from then he took over everything.

- [10] It was the Respondent's testimony that he purchased construction material for renovation of the house. He bought the pipes to get water connected to the house following which the Petitioner and her mother went to PUC to get the water connected. He paid some men to clear the electricity lines for electricity to be connected.
- [11] Learned counsel for the Petitioner submitted that the only document produced by the Respondent being a joint bank statement of the parties showed only a few transactions without any trace of substantial activity for it to have any credibility or backing to his story about the contributions at the time to the family fortune.
- [12] Learned counsel relied on the case of *Marie Charles v Jason Charles SCA 1/2003* wherein the Court said "the starting point is one of equal shares. But asks the Court to really consider all relevant factors."
- [13] It was his submission that the Respondent failed to establish "any facts apart from the fact that he started making contributions to the acquisition and development of the property when the divorce case had been filed." It was further his submission that the Courts have developed a more equitable approach in that "what you contribute to the family fortune you take out" providing that the parties can establish a factual basis for achieving a greater share of the matrimonial fortune.
- [14] It was further his submission that "the Respondent failed to present factual evidence of his share contribution apart from recent cosmetic changes to the property registered in the name of the Petitioner." It was his submission that the Respondent is only entitled to a much smaller percentage of the matrimonial home where he has only made minor contributions proved to the Court. He submitted that the Petitioner is entitled to a share more than 70% of the matrimonial home on the basis of her contributions.

- [15] To start off, what are the issues before the Court? Essentially the issue to be decided is what contributions have each party made to the purchase and improvement of the property. From there the Court can then decide the percentage share of each one.
- [16] As in any civil matter the standard of proof is on a balance of probabilities. As explained by Tibatemwa JA in the case of *Carolus and Others v Scully and Others (SCA 39/2019) [2022] SCCA 1 (28 January 2022) (Arising in CS 09/2013) SCSC 422) [2022] SCCA 1 (28 January 2022)* simply put, “[s]aying something is proven on a balance of probabilities means that it is more likely than not to have occurred. It means that the probability that some event happens is more than 50%.”
- [17] Indeed as stated in *Charles* above the Court has the discretion in accordance with section 20 (1) (g) of the Matrimonial Causes Act to make an appropriate order of settlement of property in the event of divorce on a consideration of all circumstances of the case.
- [18] In support of the Petitioner’s case Learned counsel referred the Court to the case of *Marie Hortense Lesperance v Ralph Armand Lesperance SCA 3 of 2003*. In the said case the property was registered in the sole name of the Respondent. The Court of Appeal granted each party ½ each of the matrimonial property after concluding that “there were sufficient evidence to establish that the Petitioner had made substantial contribution by helping physically in the construction of the house whilst also providing the Respondent secretarial assistance in the business where the Respondent made his money which was used for the acquisition of the property and its construction in addition to her contribution in kind to the maintenance of the family.”
- [19] In the case of *Camille v Marie (CS 68 of 2015) [2016] SCSC 312* in which the Petitioner was the sole owner of the property, Judge Dodin found that the Defendant contributed 10% directly to the value of the house another 10% indirectly to the value of the house. In that case the house was owned solely by the Petitioner and the parties had been married for 20 years.
- [20] In the case of *Mussard v Mussard (MA 215/2018 (arising in DV 50/2017)) [2020] SCSC 260 (23 April 2020)* the property in issue was purchased prior to the marriage by the

Respondent. The Petitioner claimed a share on the basis of contributions he made. On a consideration that “firmly established ... Seychellois jurisprudence that where the legal ownership of a matrimonial asset is vested solely in one party but there is overwhelming and convincing evidence that the other party made significant contributions towards the matrimonial asset in issue, the matrimonial property should be vested in both parties given the express terms of section 20(1) of the Matrimonial Causes Act giving a large discretion to the court with regard to all the circumstances of the case(*Esparon v Esparon* (1998-1999) SCAR 191)” the Court proceeded to award the Respondent SCR 100, 000 as his share of the property for the time and effort he put into the house construction.

- [21] In *Accouche v Hoareau* (SCA 35/2019 (Appeal from MA 198/2017 Arising in DV 04/2016)) [2021] SCCA 71 (17 December 2021) Dingake JA stated the position in great detail and concluded that “[I]t follows from the above that although community of property was abolished, the property solely owned by one of the spouse can be taken into account by the Court in property adjustment orders under section 20 where it is just and necessary to ensure a party to a marriage is not put at an unfair advantage in relation to the other party. The Court therefore can order that some share in the property solely owned by one party be granted to the other spouse. The Court needs to consider various circumstance of the parties and in order to assess the share of each party, the Court needs to take into account the contributions of the parties, including monetary and non-monetary contributions.”
- [22] It is not disputed that the property in question J3976 was purchased on 21st February 2017 in the waning months of the marriage.
- [23] The Respondent stated that he contributed SCR 50, 000.00 as payment for the agent. However, other than his oral testimony there is no evidence that this money was contributed by him. It was his evidence that his boss at ISPC lent him the money in cash and the money was handed to Sharoy. Yet neither his former boss at ISPC nor Sharoy was called in to testify. On the contrary the Petitioner’s evidence was supported by that of her father and mother who stated that they lent her the money for the deposit.
- [24] Furthermore he admitted in examination in chief that he “already ha[d his] little debt” before the parties were married. When asked by his own counsel for his comments on the Petitioner’s testimony that immediately after the parties were married he started incurring

debts and took out a loan of SCR 50, 000.00 his answer was “no comments on this” But then he went on to deny that the Petitioner paid off his loan of SCR 50, 000.00. He stated that “there was a piece just arrears that we call in the bank the arrears so that it was about a 20000 left to pay.”

- [25] According to him the Petitioner paid the loan and then he paid her back in hand when he got money. He then clarified that he took the loan before they got married but omitted to explain when the arrears were paid, before or after the marriage which is relevant as regard his contributions to the marriage. If he had debts before the marriage and the Petitioner was paying those debts after the marriage on the condition that he would then pay back then one has to wonder about the contributions he said he was making to the rent during their marriage.
- [26] I note at this point that the Petitioner accepted that the Respondent paid this Shairo person the sum of SCR 20, 000.00 for having facilitated the same though she tried to suggest that the money was to be returned to the Respondent, something which does not make any sense whatsoever.
- [27] The evidence shows that the Respondent’s contribution to the property from the time he moved into the property was not in his capacity as a spouse to make the home and property more comfortable for himself and the Petitioner but more for his own personal comfort. It is clear on the evidence that the parties were having issues in their marriage when the house was purchased by the Petitioner. After the house purchase she went back to live in the house with the Respondent for only one month before moving out for good and eventually filing for divorce on 28th November 2019. The majority of the receipts produced by the Respondent shows that whatever improvements he made to the house were made after the parties’ divorce. In fact the receipts dated prior to the filing of the divorce is for cement, tile fix, a length of pipe, a small extension and 2 locks.
- [28] It is further noted that the Respondent started paying SCR 4, 000 towards the loan repayment in February 2021 which came to SCR 8, 176.63 per month. The loan was disbursed in February 2017 and repayment started in April 2017. By the time that the Respondent started contributing to the loan repayment the Petitioner had been making the

repayments by herself for approximately 4 years while the Respondent was the one residing in the house.

[29] It is an understatement to say that the Respondent could not prove any of the allegations that he made or provide proof for the statements he made in evidence; from the Petitioner “conspir[ing] with a close relative who works at Barclays Bank, the same loans officer that was handling our joint loan application to amend the loan application to the Petitioner’s soles name” to his claims of earning nearly SCR 20, 000.00 from Rosebelle “with a guy like Morin he pay us well.”

[30] When asked by the Court for the jobs that he held during his 9 year marriage, he struggled to give a breakdown of those jobs. The one thing he was sure of was that he was a butcher during the whole of his marriage. To my mind the very basis of the application before the Court necessitates an assessment of his contributions to the marriage a large part of which is evidenced by his income. According to him though, he was unemployed for only 3 months during the 9 years the parties were married.

[31] At this juncture it is noted that the Petitioner didn’t provide any proof of the jobs she held during her marriage or the salaries she drew either.

[32] According to the Respondent it was his mother who advised him to move in to the house on the basis that “a man who have a house need to stay in his house”. It was also his testimony that he had to move in to protect the household items that the parties had in the house which he described as follows; “some household items, some very – I will say we got out tiles we got many things in the house. So I have to move over there before people starting notice. So it was a very high area. People were going around so I have to stay there to protect the item we have in the house.” I am inclined to believe that the Respondent moved into the house not so much because the parties planned to make it a home for themselves but to place himself in a strategically stronger position on their separation.

[33] That said, in as much as his reasons for moving into the house is not relevant to division of property following the parties’ divorce, I find it relevant in terms of his credibility. I find it hard to believe the Respondent as he was prone to making grand claims without any

supporting evidence. In the same way he alleged that he brought in a lot of money to the marriage through his employment but could not produce any payslips or testimony from his previous employer, he also claimed he moved into the house “with a great deal of cash” suggesting that it was not an issue for him to do the renovations without the Petitioner’s help, yet most of the improvements were made post divorce.

- [34] If the Respondent is to be believed he has spent SCR 59, 074.29 adding value to the property. That is in addition to the SCR 20, 000.00 that the Petitioner agreed he paid to the “agent” Shairo. He has further paid an additional SCR 36, 000 in contributions towards the loan from February 2021 to October 2021 when the matter was heard.
- [35] In comparison the Petitioner contributions towards the property is in excess of SCR 409, 378.02 being payments towards the loan from 2017 to October 2021 in addition to the SCR 30, 000.00 she, with the help of her parents, paid for the deposit plus the materials she bought for the refurbishment of the property. The Petitioner, according to my calculations, has put in about three times more equity into the property. Even if one was to take into account the time and effort that the Respondent has put into the house one has to bear in mind he was living in the house on his own bar the one month the parties tried to work on their marriage, since the Petitioner purchased the property.
- [36] On a consideration of their evidence and demeanour in the witness box, along with corroborating evidence or lack thereof, I found the Petitioner to be marginally more credible than the Respondent.
- [37] According to the surveyor’s report the property is valued at SCR 1, 395, 000 from an original purchase price of SCR 950, 000. Renovation works done was calculated at SCR 193, 528 with a breakdown of the different components though it is unclear how the surveyor came to those figures as the receipts in total came to a little over SCR 59, 000. As an example she calculated new ceiling at SCR 20, 700 yet the receipts that could cover that component in terms of pine wood and Masonite/hardboard only come to SCR 8, 647.39. In any event that is the only report this Court has to rely on. Moreover neither side took issue with the report; though the Petitioner stated in cross examination that the quantity

surveyor was not made known to her and stated that the she could not say that the surveyor's report was unbiased she proceeded to produce the said report.

[38] On the basis of the above I find that the Petitioner is entitled to 80% of the property while the Respondent's share is 20%.

[39] I accordingly find and order as follows:

- (i) the Petitioner's share in the matrimonial home shall be 80%;
- (ii) the Respondent's share in the matrimonial home shall be 20%;
- (iii) the Petitioner shall pay the Respondent the sum of SCR 279, 000.00 within six months of today's date whereupon the Respondent shall vacate the property,
- (iv) in the event the Petitioner fails to make payment as above the Respondent shall pay the Petitioner the sum of SCR 1, 116, 000.00 within six months of the Respondent's failure to pay, following which the Petitioner shall transfer the property to the name of the Respondent.
- (v) In the event that neither party pays the other as above, the property shall be sold and the proceeds of the sale shall be distributed as above.

[40] Given that this is a family dispute each side shall bear their own costs.

Signed, dated and delivered at Ile du Port 7th December 2022



Pillay J