

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC 157
MA188/2019

In the matter between:

ALLAN NIMMO
(rep by Mr Frank Elizabeth)

Petitioner

and

MUREEN CECILE MARIE
(rep by Basil Hoareau)

Respondent

Neutral Citation: *Nimmo vs Marie* (MA 188/2019) [2022] SCSC 157 25 February 2022

Before: Govinden C J

Summary: Matrimonial Property; credibility of witness

Heard: 19th May 2021

Delivered: 25th February 2022

ORDER

Application is dismissed with cost in favour of the Respondent.

RULING

The Pleadings

[1] The parties in this matter are divorced and are now in the process of settling matrimonial assets. They got married on the 12th of February 2013. The substance of the matrimonial assets in issue is a one bedroom flat formerly occupied by the parties, referred to as flat

B6 situated at Baba's estate Plaisance; moneys in a joint bank account and the personal effects of the Applicant. The Applicant is praying to this Court to order that the said flat be sold and the proceeds of the sale be apportioned equally or that the Respondent purchase the Applicant's share of this property.

[2] The Applicant also avers that all movables purchased and acquired during the subsistence of the marriage be distributed in equal shares in kind or monetary value and that his personal property and effects attached to the Order of this court dated the 11th of February 2019 be returned to him or that the Respondent pay him the monetary value thereof. Finally that funds within the parties joint bank account be apportioned equally.

[3] The Applicant has duly supported his Application with his affidavit.

[4] The Respondent objects to the Application in her responding affidavit. It is her case that she was allocated flat B6 prior to her meeting the Applicant. She avers that the unit was provided to her transitionally until she could secure a more permanent abode with the Government and that in the meantime she effected monthly payments, which was to go towards the payment of her future accommodation. In 2010-2011, she was informed that the flat was up for sale by the Government so she proceeded to make payments towards its purchase. As she and the Applicant had decided to move to Dubai, the latter forwarded to her funds that she used to purchase the flat. From September 2011 until 2012, the Applicant renovated and refurbished the flat and on the 23rd of April 2014, she was informed that she had completed her loan repayment. However, at the time of filing her reply the flat was still not transferred unto her name.

[5] The Respondent avers that she cannot give the Applicant a share in the flat as she does not own it and that she has been informed by the Government that she will not own it and that at any rate, the funds that he advanced her was in order for her to "sort her self" out before they were married.

[6] In Dubai, she helped the Applicant with his hot air balloon business and his in Scotland. They returned to Seychelles in August 2012.

[7] The Respondent denies withdrawing funds from the parties' joint HSBC bank accounts without the Applicant's knowledge.

[8] As far as the personal effects of the Applicant are concerned, the Respondent's case is that she has not misappropriated the Applicant's belongings and that at least on two occasions assisted him to come to the flat to remove his belongings but he has failed, neglected or omitted to do so. She avers that he had furthermore come to the outside of the flat on at least two occasions in order to retrieve his diving equipment.

[9] As to the F1 Powerboat pendant with diamond and gold and the F1 Powerboat 3-blade propeller pendant with diamond and gold chain, the Respondent avers that they were gifted to her by the Applicant before they got married and therefore they cannot be returned.

The testimonies

[10] The Applicant testified in chief as follows; that he was granted conditional order of divorce absolute on the 28th of March 2019 and that they had moved to Dubai in 2009 before they got married and prior to leaving they were cohabiting in apartment no B6 at the Baba Apartment. The apartment was purchased in 2011 prior to their marriage. When they moved to Dubai, as the Respondent was not working, he paid off the rent. He however does not know the total payments that went towards the loan repayment he effected and he has no supporting documents. However, he paid the entire loan in two lump sums in cash in 2011 or 2012. He does not have receipts for these payments. The Applicant claims that the Respondent was not working for the entire nine years that they had been together and that she started to work after they separated in 2017. As a private practitioner, he was earning around SR 100,000 and was supporting her during all this time.

[11] He explained the circumstances in which he left Seychelles in 2017. He overstayed his Visitors Permit and was required to leave Seychelles through a Prohibited Immigrant Notice and he was refused access back in the country, as the Respondent had not

processed his Dependent Permit in the meantime. If it was not for his divorce Petition he would have still been out. According to him, as a result, he could not settle his affairs here and he left all his personal belongings.

- [12] When he came back the first thing that he did was he made an inventory of his assets still left in the flat and got a court order for him to access the flat and retrieve his properties. He could not take everything on the first date that he had access as he had to make an inventory of everything he took. The list of inventory is admitted as Exhibit A5. On the first visit he only removed some of his professional licenses and paper work. On a second visit at the apartment, he managed to remove some clothes. He noticed that a couple of shelves had been removed. He then made a third and fourth visit when he completed the removal of the remaining property but he could not recover some properties. The Applicant produced to court a document entitled as “personal property not returned” and it was admitted as Exhibit P6. He values the missing items at SR 1,341,418. He made claim of a Breitling watch that he found missing value at USD 18,000 and a Rolex watch valued at USD 14000.
- [13] He testified further that he furnished the apartment with sofas, book shelf, desk, chairs, pictures, printer and coffee table all shipped from Dubai.
- [14] He said that he had a joint UK HSBC account with the Respondent and in 2016 whilst he was on a trip to Dubai, the Respondent “cleaned out” the account. She withdrew SR 11,000 in ten days.
- [15] As to the F1 Powerboat pendant with diamond and gold and the F1 Powerboat 3-blade propeller pendant with diamond and gold chain the Applicant says that it had to be returned as they were not gifted to the Respondent.
- [16] Under cross-examination, the Applicant however stated that he was aware that the Respondent was effecting payments towards the property even before they met. He stated that he only paid the remaining part and that he cannot confirm whether he paid before or after they got married. He cannot recall the period between the two payments that he made. He does not recall whether they were paid in cash or cheques.

- [17] As to the employment of the Respondent, he admitted that she was working with him as a dental assistant in Dubai and work with him in his hot air balloon business. A letter produced in evidence as R1 admitted to have been made by the Applicant on the other hand shows that the hot air balloon business was jointly owned by both parties. Something that he later denied and called “an embellishment of facts” and that he lied in the letter.
- [18] The Applicant denies that the money that was brought over to pay the two last instalments of the loan was money belonging to the Respondent as part of her work in the Dubai business.
- [19] He denies that the total sum of SR 11,000 were not large amount as he claim in his examination in chief. As to the fact that he did a withdrawal in Dubai also from the same account, the witness testified that he was not saying that she did not have the right to reply but simply that she never gave him the reason why she did the withdrawal.
- [20] As for the reason why he was made to live Seychelles in 2017, the Applicant in cross-examination did not confirm nor deny that he had forged the signature of his wife on a dependent permit and he admitted that it was not simply because he had overstayed his permit. He admitted further to have forged the signature of the Respondent on the first application for a Dependent Permit.
- [21] He denies that the list of personal effects was grossly exaggerated and he maintains that he could recall all the detailed items on the list even after spending one and a half year in Dubai. He said that he got their respective prices from the internet.
- [22] Under cross examination, the Applicant also testified that a Quantity Surveyor did visit the flat in April 2017 for the purpose of valuating it and that this was in the absence of the Respondent. He admitted that at that time the relationship of the parties was in troubled waters and probably coming to an end in the Respondent’s mind. He, however, denies trying to sell the property without her knowledge.
- [23] The Applicant thereafter called the Quantity Surveyor who valued the flat. According to him, the valuation was to indicate the value of the apartment and its content. The

Applicant indicated to him that he had some conflict with somebody he was with and he wanted to get an idea what it was worth. According to his valuation, the flat together with its content was worth SCR 1.4 million. He stated that the movables value was around SR 50,000 up to SCR100,000.

[24] The Applicant went on to admit having shoplifted from the Hypermarket but blamed it on stress.

[25] The last witness called by the Applicant was Ms Louwina Coralie an accountant at the Property Management Corporation (PMC), which is the government agency that rented out and sold the flat. According to her, the Respondent did purchase a one bedroom flat from the PMC and that the purchase price was SR 152,500. The payment for the flat was SR 4,035 per month spread over 5 years. The first payment was on the 28th September 2010 and it was SR 36,000. The second payment was in June 2011, which was a sum of SR 37,000; the third was on the 24th of August 2011 in the sum of SR 41,524.33 and the final payment was on the 25th of August 2011 in the sum of SR 40,000. She also made some initial small insurance payments in 2014 and 2015. All receipts for those payments are in the name of the Respondent.

[26] **Analysis and determination**

[27] I have carefully given attention to the Pleadings filed in this case and the testimony given by the several witnesses especially those given under cross-examinations. I have also given due consideration to the law and legal principles applicable to cases of such a nature as the one before this court. I am aware that, though the Respondent did not testify or call any witnesses in support of her case or made a no case to answer submission, this case has to be proved on the balance of probabilities.

[28] As is the case in all such matters before the Court, each party goes at great length in trying to convince the Court through the production of all possible documentary evidence as well as adducing oral evidence that he/she should be vested with the matrimonial property, solely or in a greater share. After seeing the Applicant testify; observing his demeanour and scrutinising his testimony I find the evidence of the Applicant to be

lacking in many respect. He contradicts himself in many areas and tends to exaggerate in others and this has affected his credibility in many areas of his testimony.

- [29] I do not believe his evidence when it comes to his denial of the joint business enterprise of the parties in Dubai. He is totally inconsistent on whether or not the Respondent had means of earning an income. In examination in Chief, he testified that she never worked at all during the course of their relationship and under cross examination he admitted that she was working with him as a dental assistant in Dubai and worked with him in his hot air balloon business. On this issue, I find that whilst they were living in Dubai prior to their marriage the Respondent was a business partner in the hot air balloon business of the Applicant and a Dental Assistant.
- [30] I further find that the Applicant forged the name of the Respondent at least twice, once on a Dependent Permit application and the other on a letter written to the Seychelles Investment Board. Moreover, after an initial denial, he even admitted that he was asked to leave this country because of these forgeries.
- [31] I also find that the Applicant caused the flat to be valued by Mr Maurel without the knowledge of the Respondent, with the aim of selling it without her consent. He also greatly contradicted himself on who and how the loan repayment was made. He testified that he effected the whole payment; then that the Respondent had started to pay before they got married and finally and that he cannot say whether this was before or after marriage.
- [32] All these affect the truthfulness of the Applicant's testimony as a whole.
- [33] In our jurisdiction there are many such cases which have been decided by this Court as well as in the Seychelles Court of Appeal and therefore guidance abounds. However, there is no set mathematical formula by which such cases are decided and each case is considered on its own merits. The cardinal principle is that there must be a level of equity in that the respective party is not deprived of their fair share of contributions in the matrimonial asset despite such asset being registered in the sole name of one party. In determining that equitable balance the Court normally starts by looking at the legal

ownership and then adjusts the shares of each party based on the level of contributions made by each party, be such contributions in cash, in kind or otherwise.

Flat B6, Baba Estate, Plaisance

[34] The registered legal ownership of B6, at Baba estate, Plaisance, is still not settled. It is a condominium which is regulated by the provisions of the Condominium Property Act(CAP 41A)and ownerships have to be registered and dealt with under the Act. According to the representative of the Property Management Corporation (PMC) the title deed to the property has been signed between the PMC and the Respondent but remains unregistered as a result of the length of the registration process under the Act. However, she insists that all receipts for payments have been issued in the name of the Respondent and the purchase agreement was between the Respondent and her Employer.Moreover, the facts of the case shows that the said flat was fully paid up in accordance to the loan agreement in August 2011,which is a date well ahead of the marriage between the Applicant and the Respondent which occurred in February 2013.It follows from these facts that the apartment B6, though not registered in the name of the Respondent, should belong to the Respondent and so I order.

[35] On the other hand,is there evidence that the Applicant made significant contributions, both in cash or in kind towards the acquisition of such matrimonial asset by the RespondentI have carefully listened to the testimonies of the witnesses and have verified the documentary evidence before the Court and I find and conclude that there is no evidence that the Applicant made any significant contribution to the purchase of Flat B6. The Applicant did donate moneys to the Respondent as he admitted under oath but these were personal gifts that were not meant to go towards house purchase, but which she purchased the flat with. Itotally disbelieve the version of the Applicant that he came with large volumes of cash from Dubai that he gave to the Respondent to transfer upon the PMC. He has not managed to show any proof to the satisfaction of this court that support his testimony that he paid the entire loan in two lump sums. Ms Coralie from the PMC

produced evidence that in fact that loan was paid by the Respondent in four different instalments. Furthermore, I note that under cross-examination the Applicant stated that he was aware that the Respondent was effecting payments towards the property even before they met and that he only paid the remaining part and that he cannot confirm whether he paid before or after they got married. He cannot recall, however, the period between the two payments that he made. He does not recall whether they were paid in cash or cheques.

[36] On the other hand, to the contrary of what he alleges, I find that the moneys used by the Respondent to effect the purchase, after and during their Dubai episodes, to be the proceeds of the Respondents direct benefits of their joint business interest and her works. Similarly, I find that the Applicant has not proved that he did any refurbishments or furnished the flat with any moveable whether before or during the subsistence of the marriage.

Monies in the joint account.

[37] The Applicant wants half of the monies debited by the Respondent from their joint bank account to be returned by the Respondent as a part of a property adjustment order. Yet the Applicant himself admitted that this was an account which the parties had agreed to be one where either parties could have transacted without the approval of the other. He further admitted to have made a debit on the account whilst he was in Dubai, without the approval of the Respondent. According to him he is only taking her to task because she withdrew SR 11,000 without telling him why. Accordingly, I would not grant this adjustment based on his own testimony.

Gifts

[38] As to the gold F1 Power boat pendant with diamond insert and the gold F1 Power boat 3-blade propeller pendant with insert and gold chain I find that it is proved on a balance of probabilities that they were gifts given to the Respondents by the Applicant and those gifts are irrevocable.

Personal effects

[39] The personal belongings of the Applicant was listed by the Applicant as A1 and it is attached to the order of this court dated the 11th of February 2019. According to him, his belongings were stuck in the flat given the way he was made to exit Seychelles in 2017.

[40] Based on the Applicant's own testimony, he went to the premises on multiple occasions in order to retrieve his personal belongings following the court order. He went there twice in the company of police officers and two other times later. Yet, he cannot account why he could not get all his belongings from the apartment on all of those occasions. He said some could not be found and produced exhibit A6, as a list of items not found. Moreover, the Applicant stated that he made no detailed inventory of his personal items found in the flats when he left Seychelles in 2017. He said that he did it in 2018 when he came back.

[41] However, the inventory is a very detailed lists of personal effects which goes in great details in respect of the items identification on top of that he can recall their exact price that they were purchased to the last cent. The explanation given by him is that he has a very good memory and he got the prices from the internet. I have carefully applied my mind to this issue and the veracity of the applicant's case relating to it and I find that he has exaggerated and embellished the content of both of A1 and A6 lists. To me the items donot show a true reflection of his personal belongings that he left in the flat and that he had been able to retrieve all of his personal belongings from the flat.

Abatement of action

[42] I note lastly that in this case, the Respondent passed away during the hearing and in terms of Section 176 of the Seychelles Code of Civil Procedure the case is not abated but survives the death. Section 177 of the Code goes on to state that in case of the death of a party to a cause or matter, the court may order that any necessary party be added or that any person entitled to represent the party who has died or become bankrupt or insolvent, or being the successor in interest of any such party, be substituted for such party. In this case, the opportunity was given to Learned counsel for the Respondent to carry out the substitution and he did not. The court consequently did not find the need to carry out the

substitution of the Respondent given the common position of the parties. This said, the benefit of this judgment can only accrue to the person or persons entitled to represent the deceased.

[43] With this Ruling all court orders made regarding the stay of the Applicant in Seychelles including the one dated the 5th of June 2019 shall lapse.

Subject to the above, the Application is dismissed with cost in favour of the Respondent.

A copy of this Ruling is to be served upon Mr Alain Volcere, Principal Secretary responsible for Immigration.

I order accordingly.

Signed, dated and delivered at Ile du Port on 25th February 2022

R. Govinden CJ

Chief Justice