

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC ...
MA188/2018
Arising in DV134/2016

In the matter between

MARIE THERESE HOSSEN
(rep. by S. Rajasundaram)

Petitioner

and

BENJAMIN FINLAY CHOPPY
(rep. by J. Camille)

Respondent

Neutral Citation: *Hossen v Choppy* (MA188/2019) [2021] SCSC (30 June 2022).
Before: Carolus J
Summary: Matrimonial Property Settlement – Matrimonial Causes Act
Heard: 25 & 26 July 2019, 17 September 2019, 15 November 2019, 8 September 2020
Delivered: 30 June 2022

ORDER

The petition is dismissed and the parties shall each bear their own costs.

JUDGMENT

CAROLUS J

Background & Pleadings

[1] The petitioner and the respondent were married on the 21st August 1969. Their marriage was dissolved upon a conditional order of divorce granted on 13th December 2016 being made absolute on 6th January 2017. The petitioner has now filed a petition seeking a

determination by this Court of her share of the matrimonial property of the parties namely H1829, H5013, and LD168; and for an Order for the respondent to pay the value of such share which the petitioner estimates to be in excess of 75% of the value of the matrimonial property, as well as movables. During the course of the proceedings, the petitioner abandoned her claim in regards to LD168 and consequently this judgment will address the petitioner's claim only insofar as it relates to H1829 and H5013.

[2] The petition is supported by an affidavit sworn by the petitioner. The respondent opposed the petition and filed an affidavit in reply stating that the petitioner's claim for a share in the matrimonial property is frivolous and vexatious as it lacks any legal basis.

Affidavit Evidence

Affidavit Evidence of Marie Therese Hossen

[3] The affidavit of the petitioner is somewhat infelicitously drafted and sometimes leads to confusion. The petitioner deponed that she has held the position first as a lecturer and after that as Principal of the Teacher Training College (TTC). It is unclear if she was a lecturer or the Principal since 1970 just after her marriage. Thereafter she has held various other positions in the Ministry of Education including senior positions such as Senior Education Officer, until her retirement. At all material times she was earning SCR6,000.00.

[4] She avers that the respondent left the Republic and the matrimonial home in 1978 for political reasons to live in England and only returned to Seychelles in 1993. Upon his return he did not resume matrimonial life with the petitioner or return to the family home.

[5] The petitioner avers that during the parties' cohabitation as spouses, they had two sons Benjamin Rondolph Choppy born in 1971 and Yves Henry Franky Choppy born in 1973, aged six and four years respectively when the respondent left Seychelles for England. After he left, she maintained the children and provided for their education and professional development using her earnings and savings with no contribution or support from the respondent, until they were employed. The petitioner avers that the respondent never contributed towards her wellbeing or that of her children.

[6] She avers that during and after the marriage, both parties jointly contributed from their respective earnings to the acquisition of properties, businesses, vehicles and moneys in accounts held with commercial banks in Seychelles. Despite leaving Seychelles, the respondent kept all his properties in Seychelles intact, and it was the petitioner who preserved and maintained the property located on titles H1829 and H5013 known as Le Surmer on which she claims their matrimonial home used to stand. She avers that they used to live in a cottage on the property prior to the respondent's departure from Seychelles which was later demolished to make place for the construction of flats. She states that these two parcels were owned by the respondent and were sold by him for the sum of SCR20,000,000.00 to P.R.G. Investment Company Limited on 4th October 2011.

[7] The petitioner also claims that she paid the debts of the respondent including those owed to Barclays Bank, British Motors and the agent for Toyota Mr. Jamshed Pardiwalla.

[8] She further avers that she has not obtained the share of the matrimonial properties that she is entitled to, which she estimates as being 75% of the total value of the assets acquired including those disposed of by the respondent.

Affidavit Evidence of Benjamin Finlay Choppy

[9] The respondent on his part, although he admits that the petitioner was a lecturer at and also the Principal of the TTC, claims that for the very short period that they lived together, she earned only a meagre salary. He also accepts that until her retirement she occupied senior positions in the Ministry of Education, but states that from the time they started living apart he has no knowledge of the salary she earned.

[10] He avers that in 1977 he left Seychelles because of political persecution to live in England where he was granted political asylum. He denies deserting the petitioner and claims that their separation arose as a result of "*unfortunate circumstances that led to [him] fleeing the country for [his] own safety*" travelling first to Kenya with the help of the petitioner, then to England. He returned to Seychelles permanently in 1991, but claims that he did not return to live with his family because the marriage of the parties had irretrievably broken down, the parties having lived apart for fourteen years and

because he had been informed that the petitioner was in an extra marital relationship. Further their sons Benjamin and Yves Choppy had become of age in 1989 and 1991 respectively.

[11] He avers that although the petitioner was left alone with their two children, she maintained them with money derived from various profitable businesses he left behind under her charge which he had given her authority to operate. He admits that the petitioner contributed towards the education of the children, but denies that she did so without any support from him, and states that she did receive financial support from him and furthermore he frequently communicated in writing with all three of them. He also denies that he did not contribute towards the wellbeing of the petitioner and their children, and claims that the businesses he left in her hands were able to generate sufficient income to cater for all three of them as well as to purchase title V3232 in 1980 for the sum of SCR150,000.00 which was registered in her sole name. He avers that unless she had secured a loan to purchase the property, which was unlikely given her meagre salary, she would have been unable to acquire that property without the money from his businesses.

[12] The businesses he claims to have left in the hands of the petitioner are the following:

(a) Le Surcouf Hotel – from which she collected rent on behalf of a company called INCOINPRO (Pty) Ltd. The petitioner received profits and dividends of the respondent from this company which she never sent to him.

(b) Le Grand Trianon Ltd trading as Le Grand Trianon – a bar and restaurant business.

(c) Leasehold interest in title T407 (15491 m²) situated at Anse Forbans, Mahe, with a four bedroom house thereon, which was surrendered by the petitioner's mother Jessy Hossen without the respondent's authority.

(d) U Drive Car Hire – a car hire business comprising approximately 37 cars.

(e) A speed boat with outboard Yamaha engines of 80cc and 26cc capacity.

- [13] The respondent denies that the petitioner made any contributions towards the acquisition of any of his properties and businesses as he claims she was only earning a meagre salary. However, he states that he left all his properties, businesses and investments in her hands as his proxy and agent in Seychelles when he left, and that contrary to her duties as such she benefitted and unjustly enriched herself with money generated therefrom without sending him any money. Furthermore, he has not received any accounts of those businesses from her or been provided with the financial reports for the same.
- [14] He claims that Le Surmer was a small bar and restaurant built on title H1829 using his own money, and which did not exist at the time they got married or even the short time that they cohabited. He states that title H1829 has never been matrimonial property because they have never had a matrimonial home. He further avers that Le Surmer was not located on title H5013 which he acquired by way of reclamation.
- [15] The respondent avers that after he returned to Seychelles in 1991 he discovered that the Suleman family had acquired INCOINPRO (Pty) Ltd by purchasing the shares therein. The business which had been previously been operating as Le Surcouf was being run by them under the name “Capatia” as a bar, restaurant, discotheque and hotel business. The respondent further avers that although the Suleman family claims that prior to purchasing INCOINPRO (Pty) Ltd they paid rent to the petitioner for the premises he has never received any such rent from 1977 when he left Seychelles, and the petitioner has not been able to account for the rent money she collected.
- [16] After a long and protracted court case, the Suleman family was ejected from the property in 1991 and the respondent took back possession thereof. He financed significant renovation and refurbishment of the property by means of various loans including two loans borrowed from DBS in the sum of SCR654,000.00 on 14th April 1992 and registered on the 16th April 1992, and in the sum of SCR100,000.00 on the 23rd October 1998 and registered on the 9th November 1998. The respondent avers that he repaid these loans from his share of the proceeds of the first sale of Marianne Island by Heirs Choppy to the company Societe Marianne (Seychelles) Ltd for the sum of SCR880,000.00. At the

time the parties were living apart and the petitioner did not contribute towards the renovations.

[17] In 1999 he applied for, and after due publication was granted permission by the Government to carry out a reclamation to increase the size of title H1829. The reclaimed land was duly surveyed and registered as title H5013 in his name after Notice of First Registration was issued pursuant to the Land Registration Act on 12th January 2000. He avers that the petitioner has no interest in title H5013 because at the time the reclamation was carried out the parties were already separated and the petitioner made no contributions towards the expenses incurred in carrying out such reclamation. He states that the petitioner therefore cannot claim to be entitled to any share in title H5013 as the property does not constitute matrimonial property since it did not exist until the years 1991-2000, almost 22 years after the parties' had separated and were living apart.

[18] On 3rd September 2007, a property of Heirs Choppy known as Choppy Bungalow situated on title LD176 was sold by licitation before the Supreme Court, with the transfer effected by deed of sale dated 22nd November 2007, and for which the respondent received a share of over SCR1,000,000.00.

Oral Evidence of Witnesses

[19] The petitioner herself, Mr. Benjamin, Rondolph Choppy and Mr. Yves Choppy testified in that order on behalf of the petitioner. With no objections from the defence and with leave of the Court, the petitioner was then recalled to give further evidence. Only the respondent gave evidence on his behalf. Their testimony excluding any evidence pertaining to LD168 is as follows.

Testimony of the Petitioner Marie Therese Hossen

[20] The petitioner aged 81 years old is now retired and lives with one of her sons. She was married to the respondent for 42 years.

[21] She started working at the age of 21 as a certificated primary school teacher and then moved on to teach at secondary level. After her studies at the University of Edinburg in 1966 to 1967 or 1968, she taught as an Assistant Lecturer at the Teacher Training College

("TTC"). She then went for further training at the University of Manchester after which she became a lecturer at the same institution. In 1979 she became the Principal of the TTC. After that she worked in various other positions namely Curriculum Officer in the Ministry of Education, Director of the National Institute of Pedagogy and Education, Director General for Culture, Director of the Creole Institute, before finally moving back to the Ministry of Education to be the Special Advisor to the Minister until her retirement in 2005. At the beginning of her career, as a certificated primary school teacher she earned a monthly salary of SCR175.00. As the Principal of the TTC she earned SCR6,000.00 monthly and her earnings increased over time so that at the time of her retirement in 2005 she was earning a monthly salary of SCR15,000.00.

[22] Although the parties were in a relationship for one or two years prior to their marriage they only started cohabiting after their marriage on 21st August 1969. They lived together as husband and wife from 1969 to 1978 or 1979 when the respondent left to live in England. At the time, the petitioner who was the Principal of the TTC went to attend a conference of Pan African Directors of Polytechnic Institutions held in Nairobi Kenya, and the respondent accompanied her because he said he was tired and wanted a holiday. While they were there, he told her he wanted to travel to England and that he would return to Seychelles later on, so she returned to Seychelles and the respondent stayed on in Kenya with a friend and then travelled to England. The petitioner denied that she assisted the respondent in fleeing the country as claimed in his affidavit, or being aware of any compelling circumstances which would require him to leave the Seychelles at the time. After she returned home, he travelled to the UK and only came back to Seychelles in 1991 or 1992. He did not resume living with the petitioner and their sons upon his return but spent only one day at their house before going to La Digue.

[23] When the respondent left for England, the parties sons Benjamin born in 1971 and Yves Choppy born in 1973 were aged seven and five years respectively. Their eldest son had just started primary school but the youngest was still at home. She did not receive any financial or other assistance from the respondent during the time that he was in England either for herself or the children, the reason she supposes being that he was not working. She maintained the family from the salary she earned with no assistance from the

respondent or anyone else. She also supplemented her salary by giving private tuition to students in the evenings. It was not easy for her. The petitioner maintained and supported her two sons through primary school, secondary school, the National Youth Service, Seychelles Polytechnic to university. They attended primary and secondary state schools and obtained Government scholarships for their university studies. They are now adults and settled in their careers and it is the petitioner who provided for them in terms of their education and livelihood.

[24] When the parties got married they went to live in a cottage at Pointe Conan on property belonging to the respondent. At the time the petitioner was a teacher and the respondent was a businessman and owned the Aerobingo business. The parties lived in the cottage for about five years and both their children were born during that time. The respondent then decided to build a complex comprising a hotel, restaurant, discotheque and two flats of two bedrooms, on the property. He told the petitioner that they would live in one of the flats after construction of the complex was completed. Since the cottage had to be demolished to make way for construction of the complex, the petitioner rented a house from one Guymer Corgat at Foret Noire at a monthly rent of SCR1000.00 for them to live in until they could move into the flat. The petitioner paid the rent. At the time their eldest son had started primary school and she also paid all the children's expenses including those related to their schooling. In addition, she bore all expenses for food, electricity and utilities.

[25] The parties never returned to live at Pointe Conan and when they travelled to Kenya they were still living in the rented house at Foret Noire. Given that the parties lived together with their children in the cottage at Pointe Conan at the beginning of their marriage, the petitioner considers it as their matrimonial home. For her the house at Foret Noire was temporary as the parties were supposed to move back to Pointe Conan to live in one of the flats.

[26] Originally, when the respondent was managing the complex it was called Le Scorpio. The respondent later leased it to a South African called Ramos who operated it under the name Le Surmer, who then leased it to one Suleman. The respondent has now sold this

property renamed Les Palmes Residence to P.R.G. Investment Company Limited represented by its Director Ramakrishnan Pillay for a consideration of SCR20,000,000.00 as evidenced by the transfer deed of titles H1829 and H5013 dated 4th October 2011 (**Exhibit P3**). This is the same property on which the cottage which the parties occupied at the beginning of their marriage stood.

[27] The respondent neither told the petitioner about the sale of the property nor paid her any share of the SCR20,000,000.00 which he obtained for it, but after she found out about it he promised that he would “do something” later as he had a lot of debts. Soon after he gave her a cheque of SCR75,000 and SCR50,000.00 for each of their sons, which she considered as gifts.

[28] The petitioner believes that she should have been paid her fair share of the proceeds of sale of the property which she considers to be between SCR8,000,000.00 to SCR10,000,000.00. This is because when construction of the property was being carried out, the parties were living together and she was bearing all the household and family expenses, while the respondent looked after and expanded the businesses. After completion of the construction around 1975 or 1976 the parties were still living together. They travelled to Kenya after.

[29] The petitioner denies that the businesses the respondent left behind when he went to England were profitable or that she benefitted from those businesses. She claims that she had to use her own money to pay the debts incurred by the respondent in the car hire business.

[30] She stated that the car hire business had only 10 or 11 cars and not 37 as claimed by the respondent, and only a few of those cars were in good condition and generated all the money for that business. Most of the mini-mokes were not in good working order and she had to employ 2 mechanics to keep them roadworthy. At first the petitioner used the money generated by the good cars to pay the debts of the business namely an overdraft of SCR125,000.00 with Barclays Bank and debts owed to British Motors and to Mr. Jamshed Pardiwalla for cars purchased by the respondent from him. The overdraft was supposed to be repaid by depositing the rent from the lease of the Pointe Conan property

directly to Barclays Bank but this was not being done. Eventually the car hire business had to be closed down since it was not a profitable one and did not generate enough income to repay the debts incurred. The petitioner being in full time employment could not manage it herself and had to get other people to do it, but they did not do the job well and were also dishonest. After the car hire business closed down there was still an overdraft owing to Barclays Bank on which interest had accrued because it was not being paid, and which the petitioner partly settled with the proceeds of sale of two mini-mokes remaining in the fleet. The balance was paid by the petitioner from her salary in monthly instalments of SCR1000.00. When the car hire business was still making money, the petitioner also sent the respondent some of it as it was the only business the income of which she had access to, but this stopped when the business closed.

- [31] The bar at St. Louis called Le Grand Trianon was left in the care of one Mrs. Hoareau who left after one month because the business was not making enough to cover the rent, and the owner of the premises Mr. Tregarthen took back possession thereof. Although the petitioner was not directly involved in the running of the business, it was understood that Mrs. Hoareau would keep her informed in that regard, but the latter only did so to inform her that she was leaving.
- [32] The petitioner denies any knowledge of a speedboat owned by the respondent which he left behind.
- [33] She also denies that when Suleman was leasing the complex at Pointe Conan, he paid the rent to her. The respondent had leased the premises to Ramos who sublet it to Suleman and the arrangement between the respondent and Ramos was for the rent to be paid directly into the respondent's account with Barclays Bank.
- [34] The respondent only had a leasehold interest in the property at Anse Forbans which he had left it in the care of the petitioner's mother. They had to pay SCR500.00 every month for the lease but could not keep up with the payments as the other businesses were not generating any income. Therefore, when the owner of the property requested to have the land back, since they were not using it, the petitioner's mother surrendered the lease.

- [35] The parties each had their own personal accounts and never had any joint bank accounts. The petitioner's salary was paid into her account.
- [36] The respondent has never asked the petitioner to account for, or asked her what happened to the businesses he left behind. However, she did explain the hardships she was encountering with the businesses while he was in England. When he returned to Seychelles the respondent never claimed anything from her or asked her for any reports. Neither did he initiate any legal action against her.
- [37] In cross-examination the petitioner agreed that she and the respondent went to Kenya in 1977 after the *coup d'état* in Seychelles and admitted that she was a supporter of the SPUP ruling political party of the time and that the respondent was a supporter of the opposition Democratic Party. She stated that she did not know why he left Seychelles to live in England; that she was not aware if it was because he was being victimised for political reasons; and that she does not remember any incident of such political victimisation. She explained her averment at paragraph 6 of her affidavit that the respondent had left Seychelles "*due to certain political reasons*" by saying that it was the respondent who had said that he went to England for political reasons. The petitioner further denied that it was she who had advised the respondent to accompany her to Kenya so that he could leave Seychelles and thereafter travel to England to seek political asylum, stating that it was he who had wanted to come to Kenya.
- [38] The parties lived separate lives and were no longer in a relationship from the time that the respondent left Seychelles in 1977. He came back for good in 1991 when both their sons were adults but the petitioner is not aware if he came back in 1989.
- [39] The petitioner admitted that title H1829 was not registered in the joint names of the parties but stated that it had been purchased by the respondent two or three years after their marriage and registered in his sole name. She is also aware that subsequent to its purchase and during the time the parties were married, the property had been reclaimed on one occasion but does not remember if the reclamation was carried while she was living at Pointe Conan or Foret Noire. However, she did not know that the property had been reclaimed twice.

[40] It was put to the petitioner that when the respondent purchased title H1829 there was a small house thereon made of limestone which was not fit for human habitation which she referred to as a cottage. She denied counsel's assertion that it was unfit for human habitation hence the reason why the respondent decided demolish it, and further that they had only occupied it for three months and therefore it could not be considered as their matrimonial home. She stated that the house had been in worse condition but the respondent had renovated it for them to live in, that they had lived in that house for about two or three years although she could not bring proof of the same and that they only moved to Foret Noire in early 1977, hence the reason why she considers it as the matrimonial home

[41] She admitted that after the complex was built on the property the parties continued to live at Foret Noire, although the respondent had told her that they would occupy one of the flats when construction was completed. Instead he rented it out to other people and went to live in one of the flats himself when he returned to Seychelles.

[42] The petitioner admitted that she had made no contributions to the purchase of title H1829 but maintained that nonetheless she had contributed to the household expenses. She also admitted that she did not know when the respondent acquired title H5013 or that he had acquired it after he returned to Seychelles when it was reclaimed. She further admitted that she had made no contribution towards its acquisition and that the property is registered solely in the name of the respondent. She agreed that she was unaware of the facts surrounding the acquisition of the property because the parties were no longer together at the time of such acquisition, having been leading separate lives since 1977.

[43] The petitioner stated that she purchased the property in Foret Noire with a loan from the Government on 5th December 1980 for a sum of SCR150,000.00, but transferred it to her sons.

[44] The petitioner maintained that after the respondent left Seychelles she never collected any rent for the lease of Le Surcouf Hotel or that she used the same for her benefit and that of the children. She reiterated that the respondent's instructions were for the lessee to pay the rent directly to Barclays Bank. She stated that the respondent had leased out Le

Surcouf Hotel to a company INCOINPRO Pty Ltd of which Mr. Ramos was a director and that later Mr. Ramos sold the company to Mr. Suleman. Furthermore, the respondent knows that Mr. Suleman did not pay any rent, hence the reason he brought a court case against him.

[45] She also maintained that she never collected any money from the business Le Grand Trianon. The petitioner's attention was drawn to the case of *Attorney General v Choppy* 1988 SLR 166, according to which the respondent was the principal shareholder of Le Grand Trianon Limited and his wife and children were the other shareholders but she responded that the respondent had set up the company himself without telling them anything and that it is only now that she knows that she had shares in the company. Further she did not know about this case and was never served with any court process in relation to it. It was further put to her that it is reported in the case that the company was in financial difficulties and that the respondent continued to pay the debts until he left the country when he made arrangements with the lessee of Le Surcouf to pay the debts. The petitioner stated that the lessee of Le Surcouf did not pay the debts as it did not even pay its own rent. She also denied any knowledge, as reported in the aforementioned case, that by 24th June 1987 all sums due to the bank by the defendant for Le Grand Trianon were paid, although she and her sons were also shareholders of the company. She stated that the respondent did everything himself and put her as a shareholder and that she never received any dividends or revenue from the company.

[46] When asked by counsel whether the car hire business failed as a result of poor management by the people she had chosen to run it as she had previously stated, the petitioner clarified that she got people to rent out the cars since she could not do it herself but not to manage the business. Further that the business failed because it did not generate enough money to pay the debts. She stated that the cars were damaged and she sold some of them to partly pay the debt owed to Barclays Bank for the loan taken by the respondent for which payment was overdue. She paid off the remainder of the loan from Barclays Bank as well as his debts owed to British Motors and Mr. Jamshed Pardiwalla but has no proof of the same. Had she not done so, they would have claimed the money owed to them from the respondent when he returned to Seychelles. She denied paying the

debts with the income from the businesses left by the respondent or benefitting from the same.

[47] As for the property at Anse Forbans, the petitioner stated that she did not know that the lease was in the name of Le Grand Trianon. She denied that there was a four bedroom house on the property, but stated that there was a small bungalow on it which she did not know how many bedrooms it had. She claimed that the house had been left in the care of her mother but she knew that one Mr. Marcel Hoareau was renting it, although she never collected any rent from him. However, the respondent had asked her to pay SCR500 for the lease of the property. When the owner fell ill, the Desaubin family wanted the property back as it was not being used, and the petitioner's mother surrendered the lease. In further cross-examination the petitioner stated that she does not know whether the property was left in her mother's or her care, but that since it was her mother who surrendered the lease the respondent must have given some kind of permission to her mother for her to be able to do so. She denied any fraudulent act on the part of her mother and herself for the surrender of the lease, and reiterated that they did so because the property was not being used and the owners wanted it back. Finally, she stated that she does not even know whether the respondent gave her a power of attorney to look after the property but that she looked after his business because she was his spouse.

[48] The petitioner confirmed that she purchased the property in Foret Noire on 5th November 1998 from Mr. Guymer Corgat for a sum of SCR150,000.00 as evidenced by **Exhibit D1** a transcription of a deed of sale for parcel V3232, which she transferred to her children five years ago. She stated that the purchase of V3232 was financed by a loan from the Government which was repaid to the Housing Development by salary deduction, but admitted that she has no documents to prove this. She denied that this is because it was financed from income derived from the businesses of the respondent.

[49] It was put to her that similarly she had no proof of the existence of the debts allegedly owed by the respondent to Barclays Bank, British Motors and Mr. Jamshed Pardiwalla or proof that she had paid those debts. She insisted that the debts existed and she had paid them. It was further put to her that according to the judgment in *Attorney General v*

Choppy whatever debt existed with Barclays Bank was paid by the respondent and by income from the businesses he left with her. She admitted that the debt was partly paid in that way, but maintained that she paid for the remainder. She reiterated that although she had no proof of payments she had made, if she had not done so, the respondent would have been asked to pay the same.

[50] After the respondent left Seychelles in 1977, the petitioner visited him once when she went on holiday in England in 1978.

[51] The petitioner admitted that other than the sums of SCR75,000 and SCR50,000 that the respondent gave her and her sons, he had on previous occasions after his return to Seychelles given her money when she requested for financial assistance. She initially stated that she had once asked for assistance with the house but does not recall how much she received. She then admitted asking him for assistance one or twice with the house but does not remember having done so on many occasions. She did not remember receiving cheques of SCR10,000.00, SCR20,000.00, or even SCR60,000.00 from him. It was also put to her that when the respondent sold his property at Pointe Conan, he gratuitously gave her a sum of around SCR300,000.00 which she claimed not to remember.

[52] It was put to the petitioner that she is not entitled to any share in H1829 and H5013 which were acquired solely by the respondent. She replied that she had paid for the household expenses while they were co-habiting while he extended his business and built the hotel at Pointe Conan. In addition, she had looked after and supported the children alone after he left, although it was her choice not to claim child maintenance. Furthermore, after the respondent left she did not receive any income from the business at Pointe Conan, or benefit from the other businesses which failed.

[53] In re-examination the petitioner maintained that she never derived any benefit from any of the businesses but that they only caused her problems. She also maintained that she has no reason to lie, and other than not being able to recall exact dates and amounts she is telling the truth.

- [54] She clarified that she took a loan of SCR150,000.00 from Seychelles Housing Development Company (SHDC) to buy the property at Foret Noire which she repaid in monthly deductions of SCR1500.00 from her salary over a period of 15 -16 years as sometimes she missed payments because she had no money. She was unsure as to whether she mortgaged the property but maintained that she did not receive any financial assistance from the respondent for its purchase.
- [55] She stated that the respondent left the car hire with someone who did not look after the business properly when he went to England, and she had to go and collect the cars from the hotel which were 10 or 11 in number and bring them to Foret Noire. She got someone else to rent the cars out since she could not go to the airport and rent out the cars herself.
- [56] As for the property at Anse Forbans, the respondent had paid some money for it and she continued paying SCR500.00 per month for one or two years but had to stop because she was not getting any money to do so from the other businesses.

Testimony of Benjamin Rondolph Choppy

- [57] Benjamin Rondolph Choppy, 48 years old, born on 18th September 1971 and currently residing at Sorento, Beau Vallon, is the son of the petitioner and the respondent. He trained as a physicist and has also obtained a Master's degree in computing and education from King's College, London. For the past 11 years he has been the Principal Secretary for the Department of Information, Communication and Technology.
- [58] His mother has now filed a claim for a share in the matrimonial property situated at Pointe Conan, Anse Etoile, where what was formerly known as Le Surmer stands. He recalls living there with his mother and father, although he was very small at the time and does not remember everything in detail but only has glimpses of his childhood memories there. He remembers pretending that he was a mason and playing with a spoon in the gravel which was being used for construction works that were ongoing at the time. He remembers a man called Ti Zan who used to break rocks in that area. He also recalls an incident where he unplugged a pipe which resulted in flooding and which he kept quiet about for fear of getting in trouble with his parents. Although he and his parents lived

there and he went to kindergarten while living there, he does not recall details about the house they lived in. He thinks that his only sibling Yves Choppy also lived there briefly, after which they all moved to Foret Noire. His father only lived with them for a short while at Foret Noire before leaving for UK when he was probably in Primary 2 or 3.

[59] Benjamin Choppy stated that the property at Pointe Conan was later sold to one Ramoo Pillay although he does not recall the year of the sale. He acknowledges receiving a cheque of SCR50,000.00 from his father after the sale but does not know for certain whether or not his mother was paid a share of the proceeds thereof, although he states that his brother probably did. He only came to know recently when his mother commenced proceedings that the property had been sold for the price of Seychelles Rupees Twenty Million.

[60] He attended Mont Fleuri Secondary School and thereafter the School of Humanities and Sciences at the Seychelles Polytechnic, before going to Manchester University in UK. He was supported solely by his mother during his schooldays as his father was not present. His mother worked with the Ministry of Education in various capacities namely Principal Education Officer, Director of the National Institute of Education, Director General and finally as Technical Advisor to the Minister. She also taught in the Adult Education Programme after working hours to earn some extra money. Although he does not recall receiving any assistance or support from his father during his school days, he states that while he and his brother were at University his father would occasionally meet with them and give them some money. As far as he is aware his father did not provide any support to his mother either.

[61] He stated that it is essentially his mother who has provided for him and his brother and assisted them until they were able to establish themselves in their careers. She worked very hard in order to do so and had to be very careful with her spending. Every month she had to make sure that all essential expenses such as repayments of the housing loan, payment of utilities and food, were covered. Her mother Jessy Hossen who also lived with them contributed to the household expenses from her pension. Their holidays were always spent at home.

- [62] Benjamin recalls that his father left some businesses for his mother to take care of when left for UK. She was supposed to run a car hire business and collect rent for what was then Le Surmer. As far as he knows these businesses did not work and his mother had to pay off loans related to these businesses from her own income reducing the family's income. She did not benefit at all from the businesses. He knew about these matters because he overheard his mother, grandmother and other people discussing them. He also remembers people coming to ask for money owed to them. He does not recall his father sending any money from UK to assist his mother during that period.
- [63] His father returned to Seychelles in 1990 around the time that he was completing his A Levels but, he did not resume living at Foret Noire although they visited each other.
- [64] His mother purchased the property at Foret Noire where they lived by means of a loan from SHDC. He was too young to contribute towards the loan repayments. He lived there until he finished university and started his own family.
- [65] In cross-examination Benjamin Choppy stated that his memories of when he was living at Pointe Conan was when he was 3, 4 or 5 years old. He does not recall exactly when the family moved from Pointe Conan to Foret Noire. He also does not recall for how long his father lived with them at Foret Noire before he left for UK there because he was still very young. He admitted that for the same reason he was not privy to the arrangements between his parents regarding the businesses his father left behind. He remembered the car hire business because it was initially based at their home and Le Surmer but admitted that he did not know about any other businesses. He also admitted that that he did not know whether his mother took steps to obtain child maintenance from his father.
- [66] Whilst he was at University he occasionally met his father and he would give him money in sums of £50, £100 or £200 but never more than that.
- [67] As for the SCR50,000.00 he received from his father, he could not confirm if a cheque of SCR350,000.00 was made out to his mother out of which the SCR50,000.00 was paid to him. He admitted that his mother did not discuss whether she received any money from

the sale of the Pointe Conan property, and stated that he was not sure whether his brother had received any money but expected that he had received the same amount as him.

[68] He agreed that his father did not come to live with them after returning from the UK because his parents had not been living together for a long time, and as far as he could tell they led separate lives. He admitted that his father returned accompanied by another woman and their children. He visited his father at Surmer most of the time, and on those occasions his father sometimes gave him money, but not all the time.

[69] He admitted that his statement that his mother had struggled to pay off loans was based on what she had told him, as he had been very young at the time and did not fully understand such matters. However, as he got older he recalls that there was always money to be repaid, which he understood from discussions, were related to loans for the businesses, but he was not aware of any arrangements in regards to those loans or what really happened in regards to their repayment.

[70] Benjamin Choppy admitted that he was married at Le Surmer 12 or 13 years ago, after his father returned for good from England and made the venue available for that occasion.

[71] He admitted that the visits by his father when he and his brother were at University were initiated by his father. After his father returned to Seychelles they always had a very good and civil relationship but his father did not seem to want to talk to him after his mother initiated divorce proceedings. He denied that it was he who did not want to talk to his father, and explained that he had not been to see his father in hospital because no one had informed him of the same and he only learnt about it from a friend who worked at the hospital when it was too late and his father was leaving.

Testimony of Yves Choppy

[72] Yves Choppy, 46 years of age, born on 5th April 1973 lives at Ma Constance. He is a civil engineer by profession and has been the Principal Secretary of the Ministry of Habitat since 2015. He is the youngest son of the parties.

- [73] He attended primary school at Good Shepherd and Mont Fleuri School where he also attended secondary school. After two years of National Youth Service he attended the Seychelles Polytechnic for 3 years. He then proceeded to Manchester University to study civil engineering.
- [74] During his school years he lived at Foret Noire. Before moving in with his parents at Foret Noire he lived with his grandmother Jessy Hossen for a short while, not far from where his parents lived. After he moved in with his parents, while he and his brother were still young, his father left to live in the UK and he continued living with his mother and grandmother at Foret Noire. He does not recall living anywhere else during his childhood. The house at Foret Noire was a three bedroom house which was originally owned by one Corgat but which his mother subsequently purchased. He believes that she paid for the house by means of an SHDC loan but is not certain.
- [75] His father returned to Seychelles in 1990 during his first year at the Seychelles Polytechnic. The family was still living at Foret Noire but he did not return to live with them although he visited them.
- [76] From the time his father left Seychelles up until the time he went to University, his mother provided for and maintained him. Although his grandmother helped she could not provide any financial assistance as she was not employed. From what he could recall his mother started out as a teacher trainer, then moved to the Ministry of Education before going to work at the Creole Institute. She also earned extra money by teaching evening classes. He does not recall receiving any financial assistance from his father prior to going to University.
- [77] His university studies were funded by a Commonwealth Scholarship from the Government of Seychelles. He never received any financial assistance from his father while he was studying in England although he visited him and his brother at the University.
- [78] He recalls that after his father left, his mother faced financial difficulties with the businesses that they had: there were debts to be repaid which led to her personal car being

seized by the bank, and for a certain time she had to be very careful with money to ensure that there was enough to sustain the family. He understood from conversations with his mother that the car hire business his father left for his mother to manage had incurred debts and she had to appear in court in proceedings for the car to be repossessed to be able to settle some of these debts. He did not know the exact details of who owned the car hire business, but presumed that his father did since he was a businessman although he does not know whether his mother had shares therein. He believes that his mother had difficulties in running the business and that eventually it went bankrupt, but stated that it was difficult for him to assess his mother's performance in running the business because of his age at the time. Other than the car hire business and Le Surmer that was being rented out, he is not aware of any other businesses that her mother was involved in.

[79] He could not say that his mother had profited from the businesses she had to settle the debts incurred by the car hire business. He believes that the debts were owed to banks but does not recall which banks. Furthermore, the assets she currently owns show that she did not benefit from the businesses.

[80] His mother discussed the family's financial situation with the two children: she had financial difficulties after the car hire business went bankrupt hence the reason she started teaching evening classes to be able to make ends meet. She also taught the children to be careful with spending money because of their financial situation.

[81] He stated that the property which his mother claims is matrimonial property is located at Pointe Conan and was formerly known as Le Surmer. He believes that it was sold to Mr. Ramoo Pillay for a sum of SCR20,000,000.00. His father gave both he and his brother SCR50,000.00 each around the time that the property was sold. Their mother told them that she also received a share of the proceeds of sale which he believes was around SCR75,000.00.

[82] After returning from University, he went back to live at Foret Noire until he got married in 1999, when he moved first to La Retraite and finally to Ma Constance.

- [83] In cross-examination Mr. Yves Choppy confirmed that he had no recollection of living at Le Surmer during his childhood but he remembered living at Foret Noire as a child and his father living there before he went to the UK.
- [84] He admitted that while he was at Manchester University, his father who was living in London at the time, visited him there at least once but did not recall any other visits from him. He also did not recall his father giving him any money when he visited him.
- [85] When his father left Seychelles he was around four years old and was attending pre-school. He was therefore not aware of any arrangements between his parents regarding the businesses left behind by his father. He knew of only two businesses namely the car hire business and the rental of Le Surmer but had no knowledge of Le Grand Trianon Bar and Restaurant or a property at Anse Forbans. From his recollection the car hire business is the one which struggled the most until it had to be closed down. He was not aware of any arrangements between his mother and any other person for managing the business because he was very young. He did not know why the business failed either.
- [86] Mr. Yves Choppy does not know whether it was his mother or father who originally purchased the property known as Le Surmer. He admitted that the property had been reclaimed on at least two occasions following its purchase to bring it to its present state, and that renovations were also carried out to the property by the respondent, which enhanced the value of the property.
- [87] He was around 17 years old when his father returned to Seychelles, and by then his parents were separated and leading separate lives. He did not know of the financial arrangements between his mother and his father but his mother told him that there were none. He also does not recall his mother seeking child maintenance from his father.
- [88] His mother did not disclose any revenues obtained from the businesses to him. He believes that had she received such revenues, she would have shared such information with him as he grew older.
- [89] When his father returned to Seychelles they had a good relationship: they met, exchanged ideas and had discussions. His father shared his plans with him and his brother and

encouraged them to pursue their studies. His father had also borne a significant portion of the costs for his wedding which had been held at Le Surmer. Although they interacted more when their father had just returned they are still on good terms. He admitted however that he had not greeted his father when he entered court that morning.

[90] He believes that his mother received a sum of SCR75,000.00 after the sale of the property at Le Surmer but could not confirm whether his mother had in fact received a sum of SCR350,000.

[91] He stated that his mother is now living with him, and that the property at Foret Noire is now being rented out since a little less than two years.

Further testimony of the Petitioner Marie Therese Hossen

[92] The petitioner produced as **Exhibit P5** a copy of her payslip for the month of December 1998 showing a deduction of SCR1500.00 for housing loan. She also produced as **Exhibit P6** a Notice of First Registration of title No: V3232 under the Land Registration Act dated 9th August 1988, notifying her that the said parcel had been registered with an absolute title in her name. The Notice showed *inter alia* the following encumbrance registered against the parcel: “*Charged to Proprietor: Government of Seychelles (Ins. 54/276) 150,000/-*”. She confirmed that the housing loan repayment on her payslip (**Exhibit P5**) was in regards to title No: V3232 located at Foret Noire.

[93] The Petitioner confirmed that the loan had been fully paid off and produced as **Exhibit P7(a)** a Discharge of Charge dated 24th April 2002, discharging the charge in favour of the Government of Seychelles in the sum of SR150,000.00 registered against Title No. V3232.

[94] In cross-examination the petitioner admitted that she had only produced the transcription of the agreement for the purchase of parcel V3232 on 5th November 1980 (**Exhibit D1**) but not produced the agreement for the loan of SCR150,000.00 she had borrowed from

SHDC to finance the purchase of the property. She stated that she did not have the loan agreement which would show the purpose for which she took the loan.

- [95] Her attention was drawn to the inscription of a mortgage to secure repayment of a loan of SCR150,000.00 by charging Parcel V3232 situated at Foret Noire (**Exhibit D1** second page). According to the document, the deed was inscribed in Volume 54 No. 216 on 25th February 1982, Registration Vol B31 No. 1601, Repertory Vol 36 No.653. It was put to her that the mortgage could not have been to secure repayment of a loan to purchase parcel V3232, as the parcel was purchased on 5th November 1980 whereas according to the inscription, the mortgage was taken on 25th February 1982. Consequently, her suggestion that she took the loan of SCR150,000.00 in 1980 to purchase Parcel V3232 cannot be correct, as the mortgage was only entered against the property in 1982 when the loan was taken and after the property had been purchased. The petitioner stated that she purchased the property with a loan from the Government and that she does not know if that was in 1980 or 1982. It was further put to her that the difference in the dates of the transfer of Parcel V3232 and the inscription of mortgage, shows that the loan was taken after the property was purchased which in turn supports the view that she never took a loan to purchase the property and used money left by the respondent to do so. She maintained that she took a loan to purchase the property and that the respondent never left any money.

Testimony of the Respondent Benjamin Finlay Choppy

- [96] Mr Benjamin Finlay Choppy a 77 year old pensioner residing at Beau Vallon is originally from La Digue. He met the petitioner on Mahe while he was residing on La Digue and she was living with her mother at Hangard Street. After they met, he continued living on La Digue and she on Mahe. Thereafter he rented premises at Hangard Street and opened a night club called the Creole Club. At that point the parties rekindled their relationship but still did not live together. The respondent lived in a room at the night club. At that time the respondent was involved in the restaurant and night club business whereas the petitioner was a teacher and had nothing to do with the business.

- [97] The parties were married in 1969, after which the petitioner went to England for about a year to pursue further studies. During her absence the respondent ventured into other businesses and rented a restaurant and nightclub at St Louis from one Captain Tregarthen – Le Grand Trianon – which was very profitable. The Memorandum and Articles of Association of “Le Grand Trianon Company Limited” dated 18th April 1970 (**Exhibit D6**), a limited liability company incorporated under the laws of Seychelles show that Benjamin Choppy, William Salter and George Woods were the original shareholders of the company. The objects of the company were *inter alia* “to open, run and keep hotels, bars and restaurants”.
- [98] When the petitioner returned from her studies, the parties lived at Le Chantier for about three to four months. The respondent then purchased a plot of land with a house thereon at Pointe Conan for a sum of SCR13,000.00 from one Wilhelmina Marie Therese. **Exhibit D2** is a transcription of a deed of sale of a plot of land at Pointe Conan, dated 12th August 1970, registered on 14th August 1970 in Register A35 No.767 and transcribed in Volume 52 No.287. **Exhibit D7** is the cadastral plan of property No. H1829 dated 7th July 1987. The respondent stated that the petitioner did not contribute anything towards the purchase of the property which was financed with funds saved from his earnings when he was in the Police Force and the British Army as well as money he had received from his family who were very well off. The respondent denied that the petitioner’s claim that the property was matrimonial property as she made no contributions towards its purchase or refurbishment of the house.
- [99] The house which was made of limestone was not in good condition, and the respondent had to carry out works to make it habitable after which the parties moved there. Their first child was born while they were living there but he was constantly falling very sick and the respondent decided to rent another house for them to live in. The petitioner identified a house at Foret Noire belonging to Mr. Corgat which they then rented. They moved to Foret Noire after having lived three to four months at Pointe Conan.
- [100] After the parties moved to Foret Noire, the respondent sought advice for the development of the property at Pointe Conan. An architect he had consulted made a proposal for the

construction of a hotel and restaurant, which would require reclaiming the area around the property. The old limestone house was demolished, and the reclamation and project undertaken by the respondent. **Exhibit D15** – page 3 of the Seychelles Bulletin newspaper dated January 18, 1971 contains a notice “*under section 2 of the Land Reclamation Ordinance No. 24 of 1961, that Benjamin Choppy has asked for permission to fill in and reclaim an area of approximately 625 square yards at Pointe Conan*” which the respondent says relates to the aforementioned reclamation of the Pointe Conan property.

[101] The project was financed with the respondent’s own money, several loans, money from profitable businesses inherited from his father, and with the help of his brother. The petitioner never lived on the property after it was developed and never contributed a cent towards the project, whereas he not only financed the project, but also provided for everything at the house where they were living at Foret Noire including the rent, groceries and the children’s upkeep as well as whatever they wanted. At the time the petitioner was earning around SCR300 to SCR350 per month. As evidence that he took loans to finance the development, he produced **Exhibit D3**, a Notice of First Registration dated 22nd July 1988 in respect of Parcel H1829 showing as encumbrances the following charges: Proprietor: Barclays Bank Int. Ltd (Ins.46/343) R100,000/-, Proprietor: Barclays Bank Int. Ltd (Ins.57/91) R100,000/-, Proprietor: Barclays Bank Int. Ltd (Ins.57/92) R100,000/-, and Proprietor: Barclays Bank Int. Ltd (Ins.57/93) R100,000/-, as well as a legal charge of R500 in favour of the Seychelles Government. He also produced an instrument of Charge under the Land Registration Act in respect Title H1829 dated 23rd October 1998 (**Exhibit D4**) to secure the payment of a loan of R100,000 with interest, borrowed by F.B. Choppy (Pty) Limited from the Development Bank of Seychelles. The purpose of the loan as per Article 1 of the instrument is “*the construction of additional rooms and upgrading of the Hotel*”. **Exhibit D5** is also an instrument of Charge under the Land Registration Act in respect Title H1829 dated 14th April 1992 to secure the payment of a loan of R654,000 with interest, borrowed by F.B. Choppy (Pty) Limited from the Development Bank of Seychelles. The purpose of the loan according to the instrument is “*for the renovation and upgrading of Le Surcouf Hotel, Bar and Restaurant*”.

- [102] The completed development consisted of the Scorpio night club, the Hontin restaurant, approximately 10 rooms on the upper floor for tourist accommodation and a car park. The place later became known as le Surmer. The respondent operated the business until 1976, when he rented it out to a company INCOINPRO (Pty) Ltd owned by some Frenchmen. **Exhibit D14** – page 3 of the Seychelles Bulletin newspaper dated October 13, 1975 and page 5 of the same newspaper dated March 25, 1976 contain advertisements for “*The Scorpio Nightclub and The Hontin Restaurant*” at Pointe Conan and “*Scorpio Nightclub and Restaurant, Pointe Conan, North Victoria*” respectively. The 1976 advertisement stated that the nightclub and restaurant were under new management. **Exhibit D16** – page 4 of the Nation newspaper dated 14th April 1977 contains an article entitled “*Comme des bulles de Champagne*” covering the opening of the nightclub “*Les Bulles*” which it described as “*la transformation d’une ancienne boîte de nuit*”. According to the article French investors had taken over a complex which was described as “*residence-restaurant-boîte de nuit*”. “*M. Ben Choppy*” is also mentioned in the article and features in a photograph along with other people, described as “*Les responsables du night-club en compagnie du Ministre Joubert et de M. Ben Choppy*”.
- [103] With his businesses performing well, the respondent opened a car hire business under the name U Drive Car Hire which was run by one of his friends and was also a success.
- [104] The respondent also leased a property of 4 acres with a four bed-room house thereon at Anse Forbans from one Camille Desaubin, on which he planned to build a hotel. **Exhibit D10** is the transcription of an agreement dated 25th November 1972, registered on 4th December 1972 in Volume B29 No.1664 and transcribed in Vol TB 7 No. 199 for the lease of a parcel of land with a house thereon at Anse Forbans by Leonie Tirant and Camille Desaubin to Le Grand Trianon Company Limited for a period of 20 years at a monthly rent of SCR500.00. The conditions of the lease were *inter alia* that “*la societe preneuse aura le droit de faire toutes constructions sur le bien louée et de couper tous arbres qui generaient les dites constructions*” and “*la societe preneuse aura le droit de faire de constructions de toutes natures pou faire du business*”. He stated that when he left Seychelles the property was being sub-let to one Marcel Hoareau for a monthly sum of SCR1,500 but he does not recall exactly when he started subletting the property to

him. During the initial period of his exile in England, the property was still being sublet to Mr Hoareau and the petitioner was responsible for collecting the rent but he does not know what happened to that money nor did he receive any of it. His wife never accounted for the rent she received either. He later discovered that the petitioner's mother Jessie Hossen had surrendered the lease. **Exhibits D12** is a deed of surrender of the aforementioned lease and **D11** a transcription of the deed. The deed is dated 26th October 1979, registered on 12th November 1979 in Register B30 No. 3566 and transcribed in Volume TB8 No.135. According to it the lease was surrendered by "*Madame Jessy Hossen ... agissant au nom et comme mandataire de Monsieur Benjamin Choppy, actuellement absent des Seychelles, un directeur de la Societe Le Grand Trianon Company Limited*". The respondent denied that he had ever given Jessy Hossen any authorisation to surrender the lease or to sign any document on his behalf. The property, he stated, was prime property and worth millions today.

[105] The respondent further stated that documents he obtained from the Registrar General also revealed that both his sons had shares in the Le Grand Trianon Company Limited. Although originally the shareholders had been himself, William Salter and George Woods, he had purchased the shares of the other two shareholders so that he owned a 100% shares in the company, but he had never transferred any shares to his sons.

[106] In 1977, while he was in Reunion, there was a coup d'état in Seychelles overthrowing then President Mancham's ruling Democratic Party and putting Mr. Albert Rene's SPUP party in power. The respondent was a strong supporter of Mr Mancham. Upon his return to Seychelles a few days later, his wife who was a fervent SPUP supporter warned him to be careful especially when he was out at night, as his night clubs closed late and sometimes he worked until the early hours of the morning. The day after his return he went to see Mrs Hoareau, the manageress of Le Grand Trianon who told him that some soldiers had come to look for him and she warned him not to go out. His friends also warned him not to openly voice his political opinions and to leave Seychelles. Sometime after, he was arrested twice at his home in the early hours of the morning and detained in a cell at the police station before being released. He was not informed of the reason for his arrest and detention.

[107] Faced with this situation, the respondent did not know what to do. He was advised to leave the country as his life was at risk, especially as other people had simply disappeared. Since his wife was going to Nairobi for a week to attend a conference he accompanied her. On their way to Nairobi the petitioner advised the respondent not to return to Seychelles because his life was in danger but told him that she would be returning home after the conference. He decided that he would go to England as he had served in the British Army and would be welcome there and informed his wife of the same. They agreed that she would later join him in England. He drafted a document authorising her to sell his properties so that she could then come to join him in England. He had to give her such authorisation because she was not involved in his businesses which were managed only by him. She had had no knowledge of how businesses operated and had never invested in or been involved in any of his businesses.

[108] After the petitioner returned to Seychelles, the respondent stayed for a month and a half in in Nairobi with friends. In spite of their agreement that she would join him in England, the petitioner only visited him there once for a week in 1978 accompanied by their eldest son Benjamin. She told him that she was only allowed to leave the country on condition that she left their youngest son Yves in Seychelles and that she could not come to live in England for that reason but he does not believe that. After she returned to Seychelles she never came back to see him although he wrote to her every month. However, she sent him money generated by his businesses on a regular basis in sums varying from £1000.00 to £3000 by way of bank transfer although he does not recall for how long she did so and did not keep any records of the bank transfers. Whenever he ran short of money he would withdraw money from a bank account he had in Jersey but at some point the petitioner asked him to authorise her to use that account as a guarantee. He did so although he did not know the purpose of the guarantee and was later informed that all the money remaining in that account to the tune of £8,000 to £10,000 had been transferred to Seychelles under the terms of the guarantee.

[109] The relationship of the parties was confined to communicating to each other through letters from the time the respondent went into exile in 1977 to when their relationship ended 4 or 5 years later, when he discovered that the petitioner was selling the cars from

the car hire after being tipped off by one of his friends. In 1980 he therefore revoked the authorisation he had given the petitioner and authorised his sister Mrs. Luce Pierre to act on his behalf. The respondent testified that he did not receive any share of the proceeds of sale of the cars from the car hire which comprised 37 cars when he left. He also received nothing for the speed boat and the two 80 hp engines he left with her.

[110] The respondent returned to Seychelles in 1989 to see his mother who had suffered a stroke with the permission of the Seychellois Government. This was the first time he saw his wife after she had visited him in England and he did not recognise his sons.

[111] When he came back in 1989, Yunas Suleman was running the business at Le Surmer. The Frenchmen who had rented the property from the respondent had been deported and had sold the shares in their company INCOINPRO (Pty) Ltd (which had been renting the premises from the respondent) to Suleman. Suleman denied the petitioner's claims that he had never paid her any rent and refused to vacate the property. The respondent, on his part states that he never received any rent from the petitioner and does not know how much rent she collected for the rental of Le Surmer from 1977.

[112] After his first visit to Seychelles in 1989, the respondent returned to England and came back in 1991 to settle for good. After enquiring from attorney-at-law Mr. Bernard Georges as to whether Suleman could be evicted from Le Surmer and being assured that he could, he filed a court case to recover possession of his property. He had previously brought a court case against Suleman in which the Court had ruled that although Suleman was in arrears with the rent this did not mean that he could be evicted. He also sought the assistance of then President Rene in recovering his property at Le Surmer. The respondent won his court case and regained possession of Le Surmer in 1992.

[113] The respondent applied for and obtained planning permission to reclaim another half-acre of land adjoining H1829. **Exhibit D17** – page 6 of a newspaper dated October 11, 1999 contains a notice under the Land Reclamation Act (Cap 106) of an application for reclamation of the foreshore by Mr. Benjamin Choppy of an area of approximately 1632 sq.m at Pointe Conan bounded on the South-West by parcel H1829. **Exhibit D8** is the cadastral plan of property No. H5013 dated 20th January 1999, which the respondent

states is the new parcel formed and registered pursuant to the reclamation. **Exhibit D9** is the Notice of first Registration of Title No. H5013 in the name of Mr. Benjamin Choppy with a qualified title.

[114] After the reclamation was completed, he refurbished the place, added a swimming pool, a pool bar and a snack shop. This was done with his own money as well as with money obtained through a loan and with the help of his family. At that time the parties were no longer in a relationship. The respondent then sold the property and moved to La Digue where he owned property that he had purchased from family members namely LD168. At the time he purchased the property he and the petitioner were separated.

[115] By the time the respondent returned to Seychelles for good, although the parties were no longer in a marital or amorous relationship, they were on good terms and the respondent helped out the petitioner financially whenever she asked. He would give her up to SCR80,000.00 or SCR90,000.00 at Christmastime or SCR20,000.00 to SCR25,000.00 if something with the house needed fixing. While he was living in Beau Vallon she told him that she was building her house and needed money to pay the carpenter and he gave her SCR25,000.00. He was therefore surprised when he received summons for the present case without the petitioner having raised the matter with him beforehand. The reason she gave was that he had not informed her that he was selling Le Surmer. He on the other hand did not find any reason to do so since she had not contributed anything towards and therefore had no interest in the property.

[116] He only found out that the petitioner had purchased the house at Foret Noire from Guymer Corgat when she commenced divorce proceedings. He stated that she did not have the money to buy that property as when he left Seychelles she was only earning SCR300.00 as a teacher.

[117] In cross-examination the respondent confirmed that after the parties got married the petitioner went to England to study for a year. Upon her return they lived together until he left Seychelles in 1977 after which they never lived together again as man and wife. Thereafter the parties remained friends and harboured no ill feelings towards each other but never resumed their marital relationship. The respondent also claims that he was very

close to his children and that it was only when the petitioner commenced divorce proceedings that the relationship between them soured. The children did not speak to him anymore and nobody came to visit him when he took ill in 2019 and was admitted to the hospital. Even after he returned from two and a half month's treatment in Reunion they did not come to see him.

[118] The respondent admitted that during the course of their marriage the petitioner became Principal of the Teacher Training College although he could not remember in what year. He maintained that at the time she earned a low salary of around 300 to 400 rupees but admitted that this was normal in the late 1960's. He does not know when she retired from the Ministry of Education.

[119] He admitted that he had no documentary evidence to substantiate his claims that that he had been politically victimised.

[120] He stated that although while he was in exile he did not send money from England to support his two children, his businesses in Seychelles were still operating and the children were maintained with the money derived from these businesses. At the time the petitioner was sending him £2,000 to £3,000 generated by these businesses and before doing so she took money for the children.

[121] The respondent clarified that the company INCOINPRO (Pty) Ltd was owned by two Frenchmen who held shares therein. The respondent leased the premises at Pointe Conan to the company and he gave the petitioner permission to collect revenues due to him from the company and to observe how things were being run. He did not give her written authorisation to collect rent on his behalf for that business in particular, but rather drew up a document appointing her as his proxy for her to look after all his businesses. He drafted the document while they were in Kenya but did not keep a copy for himself. He left all his documents with her when he went to the UK and when he came back there was nothing left. Eventually he revoked her appointment as his proxy and appointed his sister Lucie Pierre instead.

[122] When the Frenchmen were deported from Seychelles they sold their shares to the Suleman family, but the respondent never received any rent for the premises. Since his wife was taking care of all his businesses he holds her responsible for the non-payment of rent. Moreover, when he asked Suleman why he had not been paying rent, he claimed that he had paid all the money to the petitioner but the respondent does not know how much was paid. The respondent did not take any action against the petitioner because they are family. He and the petitioner filed a court case against Suleman to recover possession of the premises but the Court ruled against them. He then filed another case which he won.

[123] He denied that he gave the lease on the property at Anse Forbans to the petitioner's mother Jessy Hossen. He stated that although she had surrendered the lease he never gave her authorisation to do so and agreed with counsel that she must have done so without any valid authority. He only found out that the lease had been surrendered after commencement of proceedings regarding the matrimonial property of the parties in 2018, when he was going through documents to ascertain what had happened to all his properties. He did not check the status of the properties when he had returned to Seychelles in 1991 because he did not expect those things to happen and because he was on good terms with the petitioner and the family and did not want to create problems.

[124] While he was in the UK he did ask his wife about the status of his businesses, whether she had money and generally for an account of the businesses, and she just said that everything was running smoothly. She also used to send him money every now and then but stopped in 1980 around the time that he was informed that she was selling all the cars in the car hire business. Although he tried to find out what was happening he could not get into contact with her. The petitioner also never informed him that the car hire business was running at a loss. It was put to the respondent that the judgment in *Jacqueline Cyr v Marie Therese Choppy* 1981 SLR 194 shows that the car which was part of the car hire fleet that she sold to Jacqueline Cyr was defective. He stated that the petitioner never told him that there were any defects in the cars or that she was selling them. He also does not know what she did with the 37 cars in the fleet because she never told him. He no longer had details of all the cars because he left it all with her when he

left. The respondent states that he incurred loss by the respondent selling 37 cars for which he received nothing but he did not take any action against her to recover those losses because he was in England at the time she sold them. When he returned he did not do so because they were family but he does not condone the petitioner's actions.

[125] The respondent maintained that the petitioner had unjustly enriched herself with money from his businesses and properties but reiterated that he did not bother about the money or make any claims against her in court because they were family. It was only when she made the claims against him that it became an issue.

[126] In regards to property V3232 purchased by the petitioner the respondent maintained that it was unlikely that she had obtained a loan to pay for the property given her low salary at the time. Further that without a loan she would not have been able to purchase the property without money from his businesses. He stated that she made a first payment in cash for which he recalls seeing a document, and only took a loan afterwards.

[127] The respondent stated that since the petitioner has not contributed any money towards any of the properties, she is not entitled to a share thereof and therefore he is not liable to pay her anything. He claimed that he obtained money to finance the acquisition of all his properties by borrowing, selling family properties and from loans. As for the Pointe Conan property she has never lived or even been in the building so he does not have to pay her anything for it. Moreover, she does not deserve a share in it as she never kept him informed of what was happening to his properties/businesses.

[128] Mr. Choppy denied that after he left Seychelles, the petitioner was all by herself to fend for her two young children with only her earnings as a teacher. He stated that he left all his businesses with her including the rent that she could have collected from Suleman, and that this should have been enough for them. If it was not, she could have let him know. However, although he gave her authorisation over everything, she did nothing and moreover did not inform him of what happened to the properties.

[129] Mr. Choppy denied that he owed anything to the petitioner and stated that whatever she had benefitted from his properties should be offset against anything he owed her for her

share in the matrimonial properties. He stated that if he had not provided for his children the petitioner should have brought him to Court or as he was outside the country at least notified him.

[130] The respondent confirmed that the house which originally stood on H1829 which he subsequently sold to PRG Investments together with H5013, had one bedroom and a sitting room and was made of limestone and had a corrugated iron roof. While the parties were living in the house only one of the children Benjamin Choppy was born. He denied that Benjamin would be able to remember living there because he was only four or five years old when they moved from there to Mont Fleuri where they rented a house from Guymer Corgat that the petitioner eventually purchased. The parties' second child was born at Mont Fleuri but the respondent does not recall how long after they moved there. The parties lived there until the respondent went to the UK leaving the petitioner and their two children.

[131] After the parties moved to Mont Fleuri the respondent demolished the house and developed the property which was financed with his own money, money from his family and by means of loans. He also invested money obtained from his car hire and other businesses in the development. He worked very hard and for long hours and did not take any salary from his businesses. At the time the development cost SCR700,000.00. It took about a year for construction of the development to be completed although some parts were only completed when the company INCOINPRO (Pty) Ltd took it over. The respondent also reclaimed more land to add to the existing property and made improvements when he came back from the UK.

[132] At the time that the parties were living at Mont Fleuri and the property at Pointe Conan was being developed, the petitioner was earning the salary of a teacher and the respondent was running his car hire business, two nightclubs – the Creole Club and Le Grand Trianon, a flourishing Aerobingo business which was acquired by Government after the coup d'état and held shares in various of his family's businesses. The respondent admitted that he had no documents showing that he had those businesses at the time but after spending 14 years in the UK he cannot be expected to still have them. He denied

that the petitioner was the sole person earning a salary and maintaining the family including the two children at the time that the Pointe Conan property was being developed. He maintained that he has contributed a lot for his family and has never let them down. He reiterated that the petitioner has not contributed to the development but admitted that she did maintain the family.

[133] In regards to his sons' overseas education the respondent admitted that they had benefitted from scholarships from the Government, and that although he had been their guarantor he did not have to pay anything in that regard as they returned to Seychelles to work after completion of their studies.

[134] The respondent further states that he was never aware of any debts paid by the petitioner to Barclays Bank, British Motors and Toyota agent Jamshed Pardiwalla and that the petitioner never told her anything about it.

[135] The respondent maintained that the petitioner is not entitled either legally or morally to any share in his properties as she sold everything that he left behind when he went to the UK so that when he returned to Seychelles he had nothing. He denied that he has not initiated any action against his wife for the loss that he allegedly incurred because he did not suffer any loss.

[136] In re-examination the respondent denied that he did not bring a case against the petitioner in regards to the properties he left behind because he never had such properties. He explained that he did not do so because when he returned to Seychelles they came together as a family and he disregarded everything that had happened, until he found out that she was claiming a 75% share of his properties to which she had not contributed at all.

[137] He confirmed that in 1967 after he left the British Army he followed a business management course and in the same year started his own business in Seychelles.

[138] He confirmed that when he left Seychelles in 1977, he did not leave any debts and further the respondent never informed him of any such debts.

[139] He also confirmed that whilst he was in exile in UK there were no cases for child maintenance registered against him, and every time he would ask about the children the petitioner would say that they are all doing okay.

[140] Although he does not recall the exact figure at which the Pointe Conan property was being leased when he left, he states that it was a very good rent and concludes that the petitioner must have benefitted from such rent after he left because it was paid to her.

Submissions

[141] At the close of the case for the respondent, counsels for both parties filed written submissions. In his submissions, in addition to addressing the matter on the merits counsel for the respondent also raised a point of law for the first time which was not raised in the pleadings. He submits that the petition is bad in law and must be dismissed at the very outset as it runs afoul of Rule 34(1) as read with Rule 4 of the Matrimonial Causes Rules. In his submissions counsel for the petitioner also addressed the point of law as well as the merits of the petition. I have carefully considered both submissions and will refer to them as appropriate in the analysis below which deals first with the point of law and second the merits of the petition.

Analysis

Point of law

[142] Counsel for the respondent submits that the petition is bad in law and should be dismissed because it does not comply with Rule 34(1) as read with Rule 4 of the Matrimonial Causes Rules. The petitioner, in terms of the present petition, seeks a share in Titles H1829 and H5013. Given that those properties no longer belong to the respondent, she can only be entitled to a share in the proceeds of sale of such properties. She is therefore not entitled to relief under section 20(1)(g) of the Matrimonial Causes Act for an “*order ... in respect of any property ... or any interest or right ...in any property*” of the respondent as submitted by counsel for the respondent, but rather under

section 20(1)(b) for an order for the payment of a lump sum to her by the respondent. Paragraphs (b) and (g) of section 20(1) provide as follows:

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 –

[...]

(b) Pay to the other party or to person for the benefit of the other party such lump sum in such manner as may be specified in the order.

[...]

(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.

[143] Rule 4(1)(c) and (f) of the Matrimonial Causes Rules provides for the mode of making a claim for ancillary relief under section 20(1)(b) and (g) of the Act respectively, where this is not done in the divorce petition. It provides that:

4. (1) Every application in a matrimonial cause for ancillary relief where a claim for such relief has not been made in the original petition, shall be by notice in accordance with Form 2 issued out of the Registry, that is to say every application for:-

[...]

(c) Payment by one party of the marriage to the other party or to any person for the benefit of the other party a lump sum of money or for securing such payment.

[...]

(f) *an order 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;*

[144] Rule 34(1) further provides in relevant part that:

34. (1) An application for a ... lump sum payment in accordance with rule 4(1)(c) or in relation to property in accordance with rule 4(1)(f) ... where a prayer for the same has not been included in the petition for divorce ... may be made by the petitioner at any time after the expiration of the time for appearance to the petition, but no application shall be made later than two months after order absolute except by leave. Emphasis added.

[145] Counsel for the respondent submits that in terms of Rule 4 and Rule 34(1) of the Matrimonial Causes Rules, the petition should have been filed within two months after order absolute, or if filed outside that time limit should have been done after obtaining leave of the Court. He claims that the order absolute having been made on 13th September 2016, the petition should have been filed by 13th November 2016. However, it was filed on 6th May 2019, outside the prescribed time limit of two months without first obtaining leave of the. On that basis he submits that the petition must fail.

[146] I note that this point was not raised in the pleadings and was canvassed for the first time by counsel for the respondent in his submissions. However, I also note that despite this, counsel for the petitioner having been served with the submissions of the respondent, had notice of the point raised and had the opportunity to address the issue in his submissions which he did to some extent. He argues that the issue of the petition being time-barred was never raised by the respondent in his pleadings or his affidavit in reply, and submits that “[t]hus the Respondent having failed to raise the issue of prescription has “WAIVED IT” thus it is a legal presumption and is therefore not allowed to raise at this time of submission.”. He relies on Article 2224 of the Civil Code of Seychelles Act (“Civil Code”) to support his submissions which provides that: “A right of prescription may be

pleaded at all stages of legal proceedings, even on appeal, unless the party who has not pleaded it can be presumed to have waived it.”.

[147] The Civil Code is a general law which provides for the periods of prescription for rights of action in civil cases generally and in certain specific cases. The Matrimonial Causes Act (including the Rules made thereunder) is a special law prescribing its own time limit for filing petitions and applications under that Act. The provisions of the Civil Code pertaining to prescription therefore do not apply to such petitions and/or applications. Even if this Court were to rely on Article 2224, it is clear under that provision that the respondent may plead a right of prescription “*at all stages of legal proceeding, even on appeal*”. It cannot therefore be argued that the fact that it was not raised in his pleadings or affidavit in reply at the initial stage of proceedings, without more, amounts to a waiver, as it could be raised at a later stage of the proceedings.

[148] Having said that, I am mindful of the procedural rule that the Court is bound by the pleadings of the parties as are the parties themselves. In that respect the Court in *Amelie v Mangroo* (2012) SLR 48, explained that:

Pleadings provide the adverse party with the case it has to meet. Once the other party has prepared to meet the case at hand it is not permissible to ambush it with another case altogether of which it has no notice. Secondly, a party’s pleadings ought to act as a beacon to that party delineating for that party the case it has to prove in order to succeed. It is therefore simply not permissible for a party to depart from the case set forth in its pleadings and prove another that the other party has had no notice of and or the chance to respond to. It is not permitted so to speak to move the ‘goal posts’ of the litigation ...

[149] However, in *Banane v Lefevre* (1986) SLR 110 the Court held that “*a court or tribunal would not ignore a point of law even if not raised by the parties, if to ignore it would mean a failure to act fairly or to err in law*”. See also *Bogley v Seychelles Hotels* (1992) Ayoola 231/15. In my view, the court would “*err in law*” if it were to ignore the express provisions of the Matrimonial Causes Rules which set out a time frame for filing a petition such as the present one, notwithstanding that the issue of non-compliance with such time frame has been raised by counsel for the respondent at a late stage namely in his submissions.

[150] In his judgment delivered in *EME (Overseas) (Pty) Limited v Seychelles Licensing Authority and Anor* (Exp 57/2012) delivered on 18th February 2013 [unreported] Egonda-Ntende then CJ dismissed a petition for judicial review on the ground that it had been filed outside the prescribed three month period after the decision sought to be reviewed. The decision was made by the Seychelles Licensing Authority on 30th November 2011 and proceedings for judicial review initiated on 23rd March 2012, less than a month out of time. The Learned Chief Justice cited with approval the following words of Lord Guest in the Privy Council case of *Ratnam v Curmasamy* [1964] All ER 933 which had been relied upon by the Court of Appeal in *Aglae v Attorney General* SCA No. 35 of 2010 [unreported].

The Rules of Court must prima facie, be obeyed, and in order to justify a court in extending the time during which some step in procedure requires to be taken, there must be some material on which the court can exercise its discretion. If the law requires otherwise a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time table for the conduct of litigation.'

[151] The Learned Chief Justice went on to quote Lord Denning M.R in the English case of *Revici v. Prentice Hall Incorporated* [1969] 1 All E.R. 772 at p.774 as follows:

Counsel for the plaintiff referred us to the old cases in the last century of Eaton v. Storer (1) and Atwood v. Chichester (2), and urged that time does not matter as long as the costs are paid. Nowadays we regard time very differently from what they did in the nineteenth century. We insist on the rules as to time being observed.

[152] He concluded that “[t]his court must insist on the rules of court being obeyed as they govern the timetable for litigation. The petitioner is out of time. He did not seek leave to proceed out of time. This is fatal to this petition ...” and accordingly dismissed the petition.

[153] In the case of *Josette Sabadin v Robert Sabadin* (MA247/2011) [2014] SCSC 35 (31 January 2014) concerning a petition for settlement of matrimonial property which had

been filed well over 8 months after order absolute, without leave of the Court having been obtained, Egonda-Ntende then CJ, stated:

The delay of well over 8 months prior to the presentation of this petition has not been explained. Much as I had initially been inclined to ignore these lapses it appears to me that to do so would set a very bad precedent with regard to these matters that ought to be managed with expedition and in accordance with the procedural law which provides the framework for the enforcement of substantive rights and interests.

[154] He then went on to refer to the above quotations from *Ratnam v Curmasamy* (supra) and Lord Denning in *Revici v. Prentice Hall Incorporated* (supra) before referring to the opinion of Edmund Davies, L.J., in the latter case at p.774, as follows:

On the contrary, the rules are there to be observed; and if there is non-compliance (other than of a minimal kind), that is something which has to be explained away. Prima facie, if no excuse is offered, no indulgence should be granted.

[155] In the *Sabadin* case after observing that “[t]he petitioner has not sought leave of this Court to pursue this matter so clearly filed out of time” and that “[t]his would ordinarily be fatal to the petition” the Learned Chief Justice stated that “[p]arties and their legal advisors must understand that this court will enforce the time standards established by the rules”. However, since no objection had been made by the respondent on that ground, he reluctantly exercised some indulgence and considered the matter on the merits but warned the parties and their legal advisors that lapses of the kind would henceforth not be tolerated by the court.

[156] In the present case, unlike in the *Sabadin* case, the issue of non-compliance with the statutory time limit for filing the petition was raised by respondent’s counsel albeit only at the stage of submissions. In my view it shows lack of diligence on the part of petitioner’s counsel that leave was not sought before proceeding to file the petition more than two and a half years out of time. Had leave been sought the Court could have considered the reasons for the delay and depending on whether or not it considered that such reasons justified the delay, either granted or refused leave. As it is, leave was not

sought and the Court is not even aware of the reasons for the delay, and in the words of Edmund Davies, L.J., in *Revici v. Prentice Hall Incorporated* “if no excuse is offered, no indulgence should be granted”. Accordingly, on the basis of the above, and on the strength of the above mentioned authorities, I find that the filing of the petition out of time without seeking leave of the Court is fatal to the petition which stands dismissed. However, since this decision is one which may be appealed against, I will also deal with the matter on the merits.

On the merits

[157] The applicable law in regards to the present claim is section 20(1)(b) of the Matrimonial Causes Act Cap 124 as set out at paragraph [142] hereof.

[158] In terms of the petition, the petitioner seeks Orders of this Court for:

- (a) the valuation of properties H1829 and H5013 situated at Anse Etoile, Mahe, and registered in the name of P.R.G Investment Company Limited, having abandoned her claim in regards to LD168 on La Digue;
- (b) the respondent to pay to the petitioner the value of her share of such properties as determined by this Court, and which the petitioner estimates to be in excess of 75% of the value of the properties, as well as the movables.

[159] Both H1829 and H5013 which are adjoining plots are now registered in the name of P.R.G Investment Company Limited having been transferred to that company on 4th October 2011 for a sum of SCR20,000,000.00 by the respondent. In the circumstances the petitioner would be entitled, if at all, to a share of the proceeds of sale of the properties as opposed to a share in the properties which are no longer owned by the respondent.

[160] The Court declined to order a valuation of the properties as prayed for in the petition as at the time of the filing of the petition they were no longer in the hands of the respondent and had not been since 2011, and any valuation at that point in time would reflect the value of the properties and the developments thereon at the time of or after filing of the

petition. The petitioner's claim for a share in the value of such properties, on the other hand, has to be considered in light of the value of the properties at the time they were sold by the respondent, and in that respect I note that they were sold for a consideration of SCR20,000,000.00. In any event, the onus is on a party to prove his or her claims and to bring the necessary evidence in order to do SO. It is also worth noting that although in her petition the petitioner claims a *share "in excess of 75% of the value of the properties"* in her testimony she stated that she considers her fair share of the properties to be 8,000,000.00 to SCR10,000,000.00 at most half the price at which H1829 and H5013 were sold.

[161] The petitioner also seeks a share in "*movables*" which are not specified in the pleadings or evidence and which the Court therefore cannot consider. Hence the court will only consider her claim insofar as it concerns titles H1829 and H5013.

[162] The petitioner's claim for a share of the value of H1829 and H5013 is made on the basis that the parties' matrimonial home in which they lived at the beginning of their marriage with their children used to stand on those properties which were acquired during their marriage; that they vacated the properties in order for them to be developed on the understanding that this was only temporary and they would return to live there after completion of the development, which they never did; that at the time the development was being carried out, the petitioner bore all household and family expenses while the respondent looked after the businesses; that both parties jointly contributed to the acquisition of properties from their earnings; and further that she looked after, provided for and maintained their two children (including their education and professional education) after he left for England up to the time that they started employment without any support or contributions from the respondent.

[163] The respondent opposes the petitioner's claim in regards to H1829 and H5013. He states that H1829 was purchased with no contributions from the petitioner and that H5013 was a reclamation which was made after their separation with his own funds and that therefore she cannot make any claims thereto. He denies that H1829 is matrimonial property on the basis that they never had a matrimonial home thereon or that the

petitioner contributed towards the acquisition of any of his properties and businesses on the basis that she earned a meagre salary. He further states that his children were maintained and provided for after he left Seychelles with income derived from various profitable businesses he left behind.

[164] In my view H1829 and H5013 have to be considered separately as they were acquired at different points in time and different considerations will apply in determining the share of the proceeds thereof to which the petitioner is entitled, if any. In doing so this Court will also consider the petitioner's entitlement to the proceeds of sale of the properties on the basis that she took care of and provided for the children from the time the respondent left for England until they entered employment and were able to provide for themselves.

PARCEL H1829

[165] In order to determine the share of proceeds of sale of H1829 to which the petitioner is entitled, consideration will be given to the petitioner's contributions to the period before the respondent went to England, the period he was in England and the period after he returned from England.

Period before Petitioner went to England

[166] The parties were married on 21st August 1969. According to the respondent, after their marriage, the petitioner went to study in England for about a year and upon her return they lived at Le Chantier for three to four months although the petitioner does not make any mention of living at Le Chantier. He claims that it is only after that, that he purchased parcel H1829 with a house thereon and they moved there. Parcel H1829 was acquired by the respondent on 12th August 1970 as evidenced by **Exhibit D2** - transcription of the deed of sale - about a year after the marriage.

[167] The respondent for her part testified that she went to study at the University of Edinburgh and upon her return in 1967 or 68 - therefore prior to her marriage - taught as an assistant lecturer at the TTC and then went for further training at the University of Manchester after which she was employed as a fully-fledged lecturer at that institution, although she did not state when or for how long she went for such further training. Although her

affidavit evidence is unclear as to whether she became a lecturer or the Principal at the TTC in 1970 just after her marriage, in her testimony she clearly stated that she became the Principal of the TTC in 1979. It would seem therefore that the respondent's claim that the respondent went to study in England i.e. University of Manchester after their marriage for about a year may be true. In such a case she would have travelled to England around September 1969 shortly after the marriage and returned around August/September 1970. This coupled with the date of purchase of H1829 on 12th August 1970 renders likely the respondent's version that the parties only moved there after the purchase of the property and refurbishment of the house thereon. The evidence of both parties that their eldest son Benjamin Choppy was born while they were living in the house located on H1829 confirms that they were still living there on 18th September 1971 when he was born, about a year after the purchase of that parcel.

[168] The respondent objects to the petitioner claiming a share in parcel H1829 on the ground that it is not matrimonial property as they never had a matrimonial home. This is in direct contradiction to his own testimony that the parties moved into the limestone house on that property after it had been refurbished to make it habitable, where their first child was born on 18th September 1971. It is also his testimony that they lived there for a short period of three to four months before moving to Foret Noire because their son often fell sick because of the condition of the house. If, as he stated, they moved there after the purchase of the property on 12th August 1970 and refurbishment of the house, and lived there for only three or four months before moving to Foret Noire, his son who was born 18th September 1971 (more than a year after the purchase of the property) would not have been born by the time they moved. It is clear therefore that the parties lived there for more than three or four months. The petitioner stated in chief that they lived there for about five years and both their children were born there. In cross-examination she then stated that she lived on H1829 for two or three years and started renting the property at Foret Noire in 1977. If the parties lived on the property for 5 years after its purchase they would have moved to Foret Noire about mid-1975 whereas if they only lived there for two or three years they would have moved in 1972 or 1973. I note that their youngest son Yves Choppy was born on 5th April 1973 three years after the purchase of H1829 and could only have been born when they were occupying H1829 if they moved to Foret

Noire after his birth. The respondent claims that their youngest son was born after they moved to Foret Noire. Benjamin Choppy the eldest son testified of his childhood memories from when he lived on the property H1829 and recalls that he attended kindergarten whilst he was living there. He also thinks that his brother also lived there briefly and his testimony in that regard seems reliable. In cross examination he stated that he was “3, 4 or 5 years old” while he was living there, which means that his younger brother would have been born while they were living there.

[169] I also take note that the respondent testified that development of H1829 started after the parties moved to Foret Noire and after demolition of the house and the reclamation of an area around the property. It is also the petitioner’s testimony that the house was demolished to make way for the development. **Exhibit D15** - shows that a Notice of application to reclaim had been published in the Seychelles Bulletin of 18th January 1971 inviting any objections to the said reclamation to be made to be made by 1st February 1971 but there is no documentary evidence of when the reclamation was approved, started or was completed. In his testimony the respondent claims that construction of the development on H1829 was completed within a year. The petitioner for her part testified that construction was completed around 1975 or 1976. In fact **Exhibit D14** - an advertisement for the newly opened “The Scorpio Nightclub” and “The Hontin Restaurant” entitled “New house of entertainment by the sea at Pointe Conan” published in the Seychelles Bulletin of October 13, 1975 - confirms that construction was completed by October 1975.

[170] I am therefore inclined to believe, on the basis of all the above, that a few months after the purchase of H1829 in August 1970 (to allow for refurbishment of the house), the parties moved into the house located on that property and lived there for at least a few years most probably until just before or just after their second son was born before moving to Foret Noire. I do not believe that they only lived on H1829 for only a few months as claimed by the respondent.

[171] In any event the amount of time that the parties occupied the house on H1829, whether they returned to live there or intended to or not, and consequently whether or not it is

considered as their matrimonial home is irrelevant in determining whether the petitioner is entitled to a share in the proceeds of sale of H1829. In that regard 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.*

[172] I take note that the case of *Boniface v Malvina* (supra) had to do with actual property of a party to a marriage and not proceeds of sale of such property, but I find no reason why the same reasoning should not apply in the present case especially given that the proceeds which the petitioner seeks a share of derive from property of a party acquired during the marriage.

[173] The case also shows that whether or not the petitioner contributed to the purchase price of the property is also irrelevant to the question of whether she is entitled to a share of proceeds of sale of the property although it will assist in determining the actual

proportion to which she is entitled. The respondent testified that the petitioner is not entitled to any share in Parcel H1829 because she did not contribute towards its purchase or refurbishment of the house thereon, which was financed with money he saved from his earnings when he was in the Police Force (his first job when he finished school) and in the British Army and from his family which was very well off. It is not disputed that the respondent comes from a well to do family which owned businesses and properties. When the property was purchased the parties were recently married and had no children. The petitioner was still at an early stage in her career and at the time was not earning much as a lecturer compared to the respondent who was already an established businessman at the helm of successful businesses such as the Creole Club, Le Grand Trianon and the Aerobingo business. In addition, he claims to have held shares in various family businesses at the time. It is therefore plausible that he provided the funds for purchasing Parcel H1829 and that she made no contributions thereto. The fact that the property was transferred solely to him and registered in his sole name also bears that out. The petitioner further admitted in cross-examination that H1829 was purchased by the respondent and that she made no contributions to such purchase.

[174] But the matter does not end with the purchase of H1829. It was also extended. After the property had been purchased and the parties had lived there for a few years before moving to rented premises at Foret Noire, according to **Exhibit D15** an area of approximately 625 square yards adjoining H1829 was reclaimed, and a complex comprising a bar, discotheque, restaurant and rooms for tourist accommodation was constructed on the property. The respondent claims that the development was financed by him from his own money, loans (as shown by **Exhibit D3** which shows the existence of charges on H1829 in favour of Barclays Bank and the Government of Seychelles in July 1988), money from his other businesses and with the help of his family. According to the respondent's testimony at the time the development cost about SCR700,000.00, but no evidence of the same was adduced. The petitioner, while she does not claim to have contributed directly to financing of the development testified that while construction of the development was being carried out, she paid the rent for the house at Foret Noire where they were living, all family and household expenses including the children's school and living expenses and expenses for food, electricity and utilities, while the

respondent took care of his businesses. This is denied by the respondent who claims that he provided for everything that they needed while they were living at Foret Noire. He claims that the respondent was only earning a meagre salary of SCR300 to 350 per month at the time (although he admitted that it was normal to earn a salary of SCR300 to 400 in the late 1960's) and could not have supported the family on that salary alone. The petitioner in her affidavit claims that at all material times she was earning SCR6,000.00 but did not bring any evidence of the same. In her testimony she stated that she was earning that amount when she was Principal of TTC which she previously stated was in 1979. At the time of the construction on H1829 around 1973/1974 when she was a simple lecturer she cannot therefore have been earning more than SCR 3,000.00 to SCR 4,000.00, bearing in mind that as per Exhibit P5 her salary in 1988 as a Director was SCR5,444.00. Regardless of the income of the petitioner, I believe that she partly contributed to the household and family expenses up to the amount permitted by her earnings, although the respondent's contribution may have been higher due to his much higher income. I have the impression that both parties are exaggerating their contributions to support their claims and also I do not believe that either one of them contributed solely to those expenses. I also take into account the respondent's own testimony that when the development was taking place he worked very hard and for long hours and did not even take a salary from his businesses. This means that the petitioner must have been holding the fort on the home front fulfilling her duties and responsibilities as a wife and mother by taking care of their two young children and the respondent's needs as well as their home, while also holding down a job.

[175] In the case of *Freddy Chetty v Carole Emile* SCA No. 11 of 2008 (8 May 2009), which concerned an appeal against a decision of the Supreme Court under section 20(1)(g) of the Matrimonial Causes Act, the Court of Appeal, had this to say:

It appears the Appellant's arguments is to the effect that the Court needs look only into the contributions made by the parties that went to the acquisition of the properties sought to be distributed. In fact, the provisions of section 20(1)(g) is quite contrary to that, for under this section the Court may make an order in respect of any property of a party to a marriage for the benefit of the other party

even though the other party has not contributed financially in any way to the acquisition of such property provided the circumstances so warrant.

The Court went on to state:

It is also our view that acquisition and holding on to a property so acquired during a marriage cannot be viewed as a property owned by two business partners which is sought to be divided on the dissolution of the partnership. To do so is to deny marriage the love, affection and sanctity that goes with it and these are presumed to be in existence until parties come to court seeking dissolution of the marriage. To look into the monetary contribution that goes into the acquisition of the matrimonial property and make an award purely on that consideration would mean to leave the other party who toiled and sweated to keep the home fires burning, destitute.

And further:

Contributions towards matrimonial property cannot be measured in pure monetary terms, in hard cash. As stated earlier the love and sweat and the long hours of vigil to bring up a family by the spouses all have a role to play in the accumulation of matrimonial property. The cooking, the sweeping, the cleaning, the sewing, the laundering, tending to the children and the many other nameless chores in a home are not things for which a value can be put on, but certainly contribute towards the buildup of matrimonial property. We also find it difficult to accept that once a party makes a choice of his or her partner and decide to live together as husband and wife one party cannot be heard to say I had the better job or I am the person who brought in more money, when the relationship goes sour as the respondent has done in this case.

[176] In light of the above statements of the Court of Appeal, it is clear that the petitioner's non-monetary contributions in the form of toiling and sweating to keep the home fires burning, "*the love and sweat and the long hours of vigil to bring up a family*", "*[t]he cooking, the sweeping, the cleaning, the sewing, the laundering, tending to the children and the many other nameless chores in a home*" are as important as any financial contributions in determining the share of the proceeds of sale of the property to which she is entitled. I therefore find that the petitioner although she did not contribute to the purchase and extension by way of reclamation of H1829 or to the construction of the complex thereon in terms of funds, did contribute both in monetary terms albeit in a

lesser amount than the respondent to the household and family expenses, and in kind to taking care of the family and as such is entitled to a share of the proceeds of sale thereof.

[177] So much for the petitioner's contribution to the purchase and reclamation of H1829 and the construction of the complex thereon. The period after that also needs to be considered in regards to the petitioner's claim. It is not disputed that after construction of the complex (Oct 1975 according to **Exhibit D14**) the parties continued living together with their two children in the house they rented at Foret Noire up to the time the respondent left Seychelles for England (1977). During that period, it appears that the petitioner continued working as a lecturer at the TTC and the respondent continued running his businesses which now included the complex on H1829. I find that, similarly to the period during which the complex on H1829 was being built, both the petitioner and the respondent contributed in monetary terms to the family and household expenses although the respondent contributed more financially because of his higher earning power. I also find that the petitioner contributed in kind in kind to taking care of the family as described above, and on that basis is entitled to a share of the proceeds of sale of the property for that period.

Period when Petitioner was in England

[178] I will now go on to consider the petitioner's contribution to the property after the respondent left for England. In her affidavit she claims that she preserved and maintained the complex on H1829 during the time that the respondent was living in England. In that regard, it is necessary to ascertain the period during which the respondent was living in England. He claims that he left Seychelles in 1977 after the coup d'etat because of political victimisation as a result of which he feared for his life. In her affidavit the petitioner stated that he left in 1978 but in cross examination seemed unsure whether he left in 1977 or 1978. The respondent on the other hand appears certain that he left 1977 and was consistent on that point in both his affidavit and oral evidence, and I believe him. Similarly, the respondent claims in his affidavit that he returned to Seychelles in 1991 and maintains this throughout his testimony. The petitioner on the other hand states in her affidavit that he returned in 1993 but testified that he returned in 1991 or 1992. Benjamin

and Yves Choppy both testified that their father returned to the Seychelles in 1990. **Exhibit D5** is an instrument of charge of title H1829 dated 14th April 1992 to secure payment of a loan of SCR654,000.00 with interest borrowed by F.B. Choppy (Pty) from the Development Bank of Seychelles for the “*renovation and upgrading of Le Surcouf Hotel, Bar and Restaurant*”. The respondent produced it as evidence that after he returned from England he carried out renovation works to the property. Given the date of the instrument it is likely that the respondent returned to Seychelles either in 1990 or 1991, sometime after which he started renovation works on the building on H1829. He had been in exile for approximately 14 years.

[179] In regards to the petitioner’s claim that she preserved and maintained the complex during the time that the respondent was living in England, the respondent claims that even before he left Seychelles he rented out the complex known as Le Surcouf. Both parties are in agreement that when the respondent left Seychelles in 1977 the complex had been leased to INCOINPRO (Pty) Ltd, a company owned by two Frenchmen who subsequently sold the company to Suleman. This is confirmed by **Exhibit D14** - page 5 of the Seychelles Bulletin dated March 25, 1976 containing an advertisement stating that the Scorpio Nightclub and Restaurant were under new management - and **Exhibit D16** – page 4 of the Nation newspaper dated 14th April 1977 containing an article reporting the takeover by French investors of the complex described as a “*residence-restaurant-boîte de nuit*”. The case of *Attorney General v Choppy* SLR (1988) 166 also confirms that the restaurant/nightclub Surcouf/Scorpio owned by the respondent was rented out to a French company and subsequently to Mr. Yunas Suleman. The respondent further claims that Suleman operated the business until 1991, when the respondent returned to Seychelles for good and regained possession of the business after winning a court case against him, which is not contested by the petitioner.

[180] In his affidavit the respondent avers that when he left Seychelles he left his businesses including Le Surcouf in the hands of the petitioner with the authority to operate them as his proxy and agent (which he revoked in 1980 after he found out that the petitioner was disposing of the cars in his car hire business). In regards to Le Surcouf he avers that she collected rent and dividends on his behalf which he never received from her. According

to the petitioner however, the arrangement was that rent was to be paid directly to Barclays Bank to pay off the respondent's debts to the bank and that no rent was ever paid to her. This is confirmed in the judgment in the case of *Attorney General v Choppy* (supra) in which it is stated at page 168 para 2 that:

[The respondent] agreed to pay off the amalgamated debts at the rate "R.18,000/- per month. He made some payments each month and eventually ... left the country for England and rented out Le Surcouf to a French company giving instructions that the rents were to be paid to the bank in discharge of the amalgamated debts. The French company did not do very well economically and eventually Le Surcouf was rented out to one Mr. Yunas Suleman and then payment was no more regular and the instalments were reduced to R-5,000/- but by 24th June 1987 the total debt of R.385,000/- was paid off.

[181] Furthermore, the respondent himself admits in his testimony that he had lost the first court case he filed against Suleman in which the Court had ruled that he could not be evicted in spite of being in arrears with rent payments. His evidence in cross-examination shows that he is relying on Suleman's word that he paid rent to the petitioner but has no proof that this was in fact done. In my view, the fact that that the property was leased first to INCOINPRO (Pty) Ltd and subsequently to Suleman, that payment of the rent was made by them directly to the bank, and that the respondent had to file a court case to recover possession of the property, all show that during that time it was under their responsibility and therefore the preservation and maintenance of the complex fell to them, and was not undertaken by the petitioner. Furthermore, had the petitioner in fact preserved and maintained the property there would have been no need for a major renovation when the respondent returned from England. I therefore do not find any merit in her claim that she preserved and maintained the complex on H1829 during the time that the respondent was living in England. In my view she has failed to substantiate such claim.

[182] The petitioner also avers that she solely maintained and provided for the education and professional development of the parties' two children with her earnings and savings, with no contributions or support from the respondent, from the time the respondent left Seychelles to when the children completed their studies and started work and were no

longer financially dependent on her. She claims that she is entitled to a share in the proceeds of sale of H1829 on that basis. The respondent on the other hand claims that the petitioner maintained and provided for the two children and herself with income generated by various profitable businesses he had left in the charge of the petitioner. He further claims that she used such income to purchase V3232 on which the house they occupied at Foret Noire stood, which she would have been unable to afford otherwise.

[183] It is not disputed that Benjamin and Yves were six and four years old respectively, when their father left. According to the petitioner Benjamin was in primary school but Yves was not yet at school at the time. After that they both attended state primary and secondary schools, the National Youth Service and the Seychelles Polytechnic. They were both awarded scholarships for their university studies. She claims that she not only provided for them financially with her earnings but also took care of them with no help or support from anyone else, except her mother who lived with them. She testified that she also taught evening classes to supplement her salary which is confirmed by the testimony of Benjamin and Yves Choppy. Although the educational institutions attended by the two boys provide their services free of charge, parents still have to provide certain things and incur certain expenses for their children attending such institutions. For example, uniforms, shoes, bags and stationery among other things. Similarly, although they benefited from scholarships when they went to University and this covered their tuition and basic needs, it is likely that their mother provided them with certain little extras that they needed.

[184] In addition to this, while they were growing up the petitioner had to provide them with food, clothing and other necessities, as well as shelter and in that line pay the rent and utility bills. The petitioner further testified that she purchased parcel V3232 and the house thereon which she had previously been renting from Mr. Guymer Corgat for a consideration of SCR150,000.00 as evidenced by **Exhibit D1** - the transcription of deed of sale of dated 5th November 1980. She claims that she took a loan from the Government in order to do so which is denied by the respondent who claims that she used money generated by the businesses he left behind. Counsel for the respondent tried to make out that she could not have taken the loan of SCR150,000.00 for that purpose as according to

Exhibit D1 (second page) the mortgage to secure repayment of a loan of SCR150,000.00 by charging parcel V3232 in favour of the Government was inscribed on 25th February 1982, whereas the property was purchased before that i.e. on 5th November 1980. He argues that the property having been purchased in 1980, the loan to finance such purchase could not have been taken in 1982 when the mortgage was entered against the property. I do not subscribe to this argument: it is the inscription of the mortgage which took place on 25th February 1982 but the deed giving rise to such mortgage must have been entered into prior to that, which date is unknown to this Court. In any case, this certainly does not prove that the petitioner did not take a loan to pay for parcel V3232 or for that matter that it was purchased with funds obtained from the respondent's businesses. In fact, **Exhibit P5** - payslip for December 1998 – shows that the petitioner was indeed repaying a housing loan. Furthermore, the fact that the charge encumbering the property was in the sum of SCR150,000.00 as shown by **Exhibit P6** and **Exhibit D1** (second page) which is the amount of the consideration for the transfer of the property, renders it more likely than not that the loan was for that purpose.

[185] Other than the financial aspect of providing for the children, there is also the love, care and affection given to them, the time spent with them, helping them with their homework, taking care of them when they were sick, teaching them life skills and values and generally bringing them up to be valuable members of society. It must not be forgotten that the petitioner was not only a single mother of two but also held a full time job and also taught extra classes. As will be seen below at the same time as she was doing all that, the petitioner was also trying to take care of some of the respondent's businesses.

[186] The respondent claims that during the time he was in England he frequently wrote to the petitioner and the children. Although he cannot be blamed for leaving since he felt his life was at risk because of political persecution, the fact remains that the petitioner was left to shoulder the burden of bringing up her young family by herself. The respondent also claims that the income from the various 'profitable' businesses he left with the petitioner served to provide for the children. The respondent complains that the petitioner did not provide him with accounts or financial reports of those businesses. However, the petitioner himself admits that he never asked for the same even after he returned from

England. He claims that this is because they were family and he wanted to keep the peace and it only became an issue after the petitioner filed the present claim. In my view it is understandable that she was neither asked nor provided such information in view of their past relationship, that they had two children together and that before the divorce and matrimonial property proceedings they appeared to have been on good terms. In the circumstances he cannot now reproach her for not doing so. I now proceed to deal with each of the businesses the income of which the respondent claims was used to provide for the children.

Le Surcouf

[187] As stated at paragraph [179] hereof the complex on H1829 known as Le Surcouf was leased to INCOINPRO (Pty) Ltd and subsequently to Yunas Suleman and the rent paid directly to the bank to pay off the respondent's debts to the bank which was paid off by 24th June 1987. After 1987, the petitioner claims never to have received any of the rent money from Yunas Suleman. In any event, as stated, the respondent was only relying on Suleman's word that he paid the money to the petitioner, and as rightly pointed out by her the respondent would not have had to file a court case against him if he had been paying the rent. I therefore find that the petitioner did not receive any money from that business.

Le grand Trianon Bar and Restaurant

[188] Le Grand Trianon - a bar and restaurant business –was owned by the company Le Grand Trianon Company Limited (“the Company”) which had as its objects inter alia “to open, run and keep hotels, bar and restaurants”, and for which the respondent rented premises from Captain Tregarthen. Although the bar/restaurant appears to have been a profitable business in its earlier years this does not seem to have lasted. According to the case of *Attorney General v Choppy* (supra), in 1977 the Company loaned SCR74,300.00 to the respondent for carrying out extensions to Le Surcouf which shows that the business must have been doing well financially at that time. However, it is stated in that case that eventually the Company got into financial difficulties and had an overdraft at Barclays Bank. This resulted in the respondent amalgamating his own personal debts to the bank and the debt of the company which he repaid until he left the country, when he made

arrangements for the rent for Le Surcouf to be paid directly to the bank in discharge of the amalgamated debts which had been repaid in full by 28th June 1987. This shows that even before the respondent left the country, the company which owned the bar and restaurant business was in difficulty. Other than the lease of Title T407 and house thereon, no evidence has been brought that the company owned or is linked to any other businesses. I am therefore inclined to believe the petitioner that the bar and restaurant business closed shortly after the respondent left Seychelles because the business was not making enough money to cover the rent, and Mr. Tregarthen took back possession of the premises. I therefore find that she could not have benefited from any income from this business.

Title T407 and house thereon

[189] The company which owned Le grand Trianon Bar and Restaurant i.e., also held a leasehold interest in title T407 at Anse Forbans as evidenced by **Exhibit D10** – lease agreement dated 25th November 1972 effective 1st March 1973 for twenty years at a monthly rent of SCR500.00. In his affidavit the respondent claims that the property measures 15491 m² and has a four bedroom house thereon. The respondent testified that when he left Seychelles the house was being rented out to one Marcel Hoareau for SCR1500 per month and that the petitioner was responsible for collecting the rent. The lease agreement with Marcel Hoareau was not produced and there is no evidence of the same but the petitioner admitted that she knew Marcel Hoareau was renting the house although she denied collecting any rent. In cross-examination the respondent stated he found out after commencement of these proceedings in 2018 when ascertaining what had happened to his properties, that the lease had been surrendered by the petitioner’s mother Jessy Hossen and this without his authority. The petitioner initially claimed that the property had been left in the care of her mother and that they were paying SCR500.00 per month for it but in cross examination stated that she did not know if the property was left in her care or her mother’s. She however stated that her mother must have had some authorisation in order to surrender the lease. **Exhibit D11** – deed of surrender dated 26th October 1979 - shows that the lease was surrendered by “*Madame Jessy Hossen ... agissant au nom et comme mandataire de Monsieur Benjamin Choppy, actuellement*

absent des Seychelles, un directeur de la Societe Le Grand Trianon Company Limited". Emphasis added. It is highly unlikely that the Notary who executed the deed i.e. Me Marie Clement Raoul Nageon de Lestang, would have stated that Mrs. Jessy Hossen was acting on behalf of and as agent of the respondent without some document authorising her to do the same. I therefore agree with the petitioner that Mrs. Hossen must have had some authority to do so.

[190] The respondent claims that the property is prime land and now worth millions. However, this is irrelevant to the present claim as the Court is only considering the property in light of the income it generated during the time that the respondent was in England as contributions to the maintenance of the children. The petitioner stated that they paid SCR500.00 per month to the owner of the property from income from the other businesses for one or two years, but had to stop after such businesses stopped generating any income. The petitioner also stated that after they stopped paying the rent of SCR 500, since they were not using the land, presumably for further development, when the owner of the property requested to have it back, they surrendered the lease. As to the income from the rent of the house on the property, the petitioner stated that she knew that Mr. Marcel Hoareau was renting the house but that she never collected any rent from him. It is not known until when Mr. Hoareau rented the house and it is possible that the rent was collected by the petitioner's mother. If that was the case, I find it hard to believe that the petitioner would have been unaware of the same. In any case given the fact that the lease was surrendered on 26th October 1979 no rent could have been collected beyond that date. Given that there is no documentary evidence of the amount of rent paid by Mr. Hoareau, the uncertainties in when he ceased to rent the house and the lack of any evidence that he continued paying the rent after the respondent's departure, I cannot make a finding that the petitioner collected a rent of SCR1,500 or for any specific period for that matter.

U Drive Car Hire

[191] Another 'profitable' business the respondent claims to have left behind in the care of the petitioner is a car hire business called U Drive Car Hire which he says comprised approximately 37 cars. The petitioner for her part claimed that the business had only 10

or 11 cars. Neither party has been able to substantiate their claims regarding the number of cars.

[192] The petitioner denies that the business was profitable and that she benefitted in any way from the income generated by it. She claimed that only a few of the cars were in good condition and it was those cars which generated all the money for that business. According to her most of the mini-mokes were not in good working order and she had to employ 2 mechanics to keep them road worthy.

[193] She also claims that far from benefiting from the car-hire business, she had to use her own money to pay the debts of the business incurred by the respondent. The debts consisted of an overdraft of SCR125,000.00 with Barclays Bank which was supposed to be repaid by depositing the rent obtained by leasing Le Surmer directly to Barclays Bank, but which was not being done. She further claims that the respondent also owed money to British Motors and to Mr. Jamshed Pardiwalla for cars he had purchased from them. She explains that at first the money made by renting the few good cars in the business was used to pay off the debts but in time the business failed to generate enough income for her to continue doing so and eventually had to be closed down. She claims that after the car hire business closed down there was still an overdraft owing to Barclays Bank on which interest had accrued because it was not being paid, and which she partly settled with the proceeds of sale of two mini-mokes remaining in the fleet. The balance was paid out of her salary in monthly instalments of SCR1000.00. For his part, the respondent states that the petitioner never informed him of the alleged poor state of the cars. He also denied leaving any debts and further claims that the petitioner never informed him about them or having to pay them off.

[194] I do not believe the petitioner's story that only a few of the cars were in good condition when the respondent left Seychelles and that she had to sell them because they were defective. I note that it was put to the respondent in cross-examination that the case of *Jacqueline Cyr v Marie-Therese Choppy* 1981 (SLR) 194 shows that the cars in the car hire fleet were defective. In that case, after the plaintiff Jaccqueline Cyr had purchased the car from the petitioner, it developed problems due to latent defects in the steering and

braking systems which had been there before the purchase. She sued the petitioner for the refund of the purchase price. The court in that case stated that the petitioner “*took over the management of the business and then decided to run it down and close it. She sold several vehicles of that business.*” There is no mention in the judgment that the business was being closed down because the cars were defective. In fact, the defence of the petitioner in that case was that “*the vehicle was in good condition when the plaintiff took delivery of it and that if the vehicle is now defective, the defects have arisen out of improper use of the vehicle by the plaintiff.*” Further the Court found that the petitioner “*acted in good faith in selling the vehicle to the plaintiff. She did not know of the defects and could not reasonably have been aware of them ...*” The petitioner then cannot now be heard to say that she sold the vehicles because they were defective.

[195] According to her with the money generated by the business, she not only managed to pay the debts of the business but also sent some to the respondent, who confirmed that the petitioner used to transfer sums varying from £1000.00 to £3000 by way of bank transfer (although he does not recall for how long she did so and did not keep any records of the bank transfers). I find it strange that the petitioner would send money to the respondent without first taking some for the use of her children and herself, and I do not believe that during the time that the business was working well, she did not benefit at all from money generated by it and that it was used solely to pay the debts of the business and to send to the petitioner. In my view when the respondent left the business was profitable and remained so for some time after. It is to be noted that the respondent testified that a few years after he left Seychelles he found out through a friend that the petitioner was selling the cars of the car-hire which is when he withdrew his authorisation for her to operate his businesses. In the case of *Jacqueline Cyr v Marie-Therese Choppy* 1981 (SLR) 194 the petitioner sold a mini-moke from the car-hire in February 1981. This shows that until around that time i.e. two years after the respondent’s departure, the car-hire business was still operating and had not yet closed down.

[196] As to the alleged debts the petitioner claims to have repaid, in regards to the Barclays Bank debt it is to be remembered that in *Attorney General v Choppy* (supra) the Court found that Le Grand Trianon Limited had an overdraft with Barclays bank which was

amalgamated with a personal debt owed by the respondent to the bank which the respondent started paying off in monthly instalments of SCR18,000.00. When he left for England he made arrangements for the lessee of Le Surcouf - a French company - to pay the rent to the bank in discharge of the debts. It is possible that personal debt of the defendant which was amalgamated to the debt of Le Grand Trianon Limited were debts of the car hire business. In the Choppy case it is stated that after the respondent left for England, the French company did not do well economically and Le Surcouf was leased to Yunas Suleman “and then payment was no more regular and the instalments were reduced to R-5000. But by the 24th June 1987 the total debt of R.385,000/- was paid off”. It is not stated that the whole of the remaining debt to the bank had been paid by Yunas Suleman, but merely that it was paid off by the 24th June 1987. It is therefore possible that the petitioner may have paid off part of the remaining debt with the revenue from the car hire, and when the care hire closed paid the remainder from her own earnings as she claims. However, she has not brought documentary evidence that she paid off part of the debt which she states she paid off in monthly instalments of SCR1,000.00 but which she does not specify for how long so that the Court is left with no idea of the amount she claims to have repaid. Similarly, the alleged debts owed to British Motors and to Mr. Jamshed Pardiwalla have not been substantiated. The only thing the petitioner had to say on the subject is that if she had not paid the said debts they would have claimed the money from the respondent when he returned to Seychelles.

[197] I note however that the parties’ eldest son Benjamin Choppy confirmed his mother’s version that she had to pay off loans related to the car hire business with her earnings, but I am reluctant to take any account of his testimony in that regard since it is based on what he gathered from conversations between his mother and his grandmother which he overheard and he had no personal knowledge of the same. He also claims that people came to the house to ask for money owed to them but the identity of those persons is unclear as are the reason for the alleged debts owed to them. Yves Choppy, the youngest son also testified that the car hire business had incurred debts and that the petitioner had to appear in court proceedings for her personal car to be repossessed to settle debts to the bank, but again this is based on what his mother had told him and furthermore he seems the only one who recalls the petitioner’s personal car being repossessed which I would

have expected the petitioner at least to remember. It is also pertinent that both Benjamin and Yves were very young at the time and unlikely to have had any personal knowledge of business matters of their parents.

[198] Counsel for the respondent has also tried to lay the blame for the failing of the business at the petitioner's feet, and presumably for not benefitting from the income of that business for that reason. The petitioner claimed that she took over the running of the business from the person in whose responsibility the respondent had left it, as the person was not looking after the business properly but since she was in full time employment and could not go to the airport and rent out the cars herself she got other people to do. However, they did not do the job well and were also dishonest. It must be borne in mind that the petitioner was not a business woman and on the respondent's own admission, she was never involved in the running of any of his businesses prior to his departure for England. It is therefore very likely that she could have been taken advantage of and not unlikely that her lack of knowledge and experience in business matters contributed to the demise of the business. Furthermore, being in employment and a single mother of two young boys it is understandable that she would not have had the time to engage in the demanding task of taking care of the businesses and overseeing the people charged with running them. She cannot therefore be blamed for not being able to do so.

In conclusion I find that the petitioner did benefit from income from the car hire business for at least two years after the respondent left, part of which she sent to the respondent. She also benefitted from the sale of the cars of that business. Furthermore, she has not proved that she used any of that income to settle the debts of the business or that she used her own money to do so. However, the court is not in a position to ascertain the amount of the income she benefitted from or the money obtained for the sale of the cars on the evidence adduced.

Speed boat

[199] The respondent claims that he left a speed boat with two Yamaha engines of 80cc and 26cc respectively but of which he has brought no evidence. The petitioner denies any knowledge of the same. Even if the Court were to believe the respondent, it cannot

ascertain the value of either the vessel or the engine, and in the circumstances, the Court declines to take into account such assets.

Period after respondent returned from England

[200] After the respondent returned from England, it appears that further works were carried out to the property thereby increasing its value. The respondent claims that after he returned from England, he renovated and refurbished the buildings on H1829 which was financed by loans including two loans borrowed from DBS. This is supported by **Exhibit D5** – an instrument dated 14th April 1992 charging title H1829 to secure payment of a loan of SCR654,000.00 with interest borrowed by F.B. Choppy (Pty) from the Development Bank of Seychelles for the “*renovation and upgrading of Le Surcouf Hotel, Bar and Restaurant*”. It also appears that further works were carried out by the respondent on the property sometime in 1998. This is shown by **Exhibit D4** – another instrument dated 23rd October 1998 charging title H1829 to secure payment of a loan of SCR100,000.00 with interest also borrowed by F.B. Choppy (Pty) from the Development Bank of Seychelles for the “*construction of additional rooms and upgrading the Hotel*”. The respondent avers in his affidavit that he repaid these loans from his share of the proceeds of the first sale of Marianne Island by Heirs Choppy to the company Societe Marianne (Seychelles) Ltd amounting to SCR880,000.00. He stated that the petitioner did not contribute to such works as they were living apart at the time. I note in that regard that by 1990 – 13 years after the respondent left for England during which time the parties had only met once in 1978 for a week - the marital relationship of the parties had completely broken down and they remained married in name only, the respondent being in another relationship. In any case the petitioner does not claim to have contributed to such works.

[201] Nevertheless, I note that at that time although their eldest child was no longer a minor and the youngest nearly of age, they were both still pursuing their education. According

to Benjamin Choppy the parties' eldest son, the respondent returned to Seychelles in 1990 when he was completing his A'Levels. In 1990 he was 19 years old and would be starting his university studies shortly for which he obtained a scholarship. Yves Choppy testified that when his father returned to Seychelles which was in 1990 he was around 17 years old and attending his first year at the Seychelles Polytechnic. He would also be attending University within a year or so on a scholarship. It is not known exactly when they started work and became financially independent although it can safely be assumed that this was upon completion of their university studies in 1994 for Benjamin and 1996 for Yves or thereabouts. Before that the petitioner was still taking care of the children both financially and in non-monetary terms. In fact, the children stated that that he did give them some money whenever they visited him after he returned to Seychelles and on the few occasions he visited them when they were at university but it does not appear that this was in the nature of regular and substantial maintenance payments but more in the nature of pocket or spending money.

[202] As to the petitioner's claim that he did not receive any assistance from the respondent after he returned from England, the respondent claims that after he came back to Seychelles he assisted the petitioner by giving her money whenever she requested it. He testified that at Christmas time he would give her up to SCR80,000.00 or SCR90,000.00 or SCR20,000.00 to SCR25,000.00 to fix the house. In cross-examination the petitioner admitted asking him for financial assistance which he gave her, but does not state the sum received which counsel put to her were sums of SCR10,000.00, SCR20,000.00, or even SCR60,000.00 but which she did not confirm.

[203] It is my considered view that the petitioner is entitled to a share of the proceeds of H1829 on the basis of her monetary and non-monetary contributions to the maintenance of their children even after the respondent returned to Seychelles. However, it must be taken into account that the respondent did give financial assistance to the petitioner when requested by her although the amount of such contributions cannot be ascertained. The sum of SCR75,000.00 which the petitioner admits receiving from the respondent upon the joint sale of H1829 and H5013 must also be taken into consideration in the computation of the sum to which she is entitled.

H5013

- [204] I now move on to consider the entitlement of the petitioner to a share of the proceeds of H5013. The respondent denies that the petitioner has any share in H5013 on the basis that it was land that was reclaimed by him after the parties had been separated for almost 22 years and she made no contributions thereto.
- [205] **Exhibit D17** is the publication of a notice of application under the Land Reclamation Act (Cap 106) for reclamation of the foreshore by Mr. Benjamin Choppy of an area of approximately 1632 sq.m at Pointe Conan bounded on the South-West by parcel H1829. The publication is dated Monday October 11, 1999. The respondent testified that H5013 is the new parcel formed and registered pursuant to the reclamation. In support he produced **Exhibit D8** - the cadastral plan of property No. H5013 dated 20th January 1999, with the following description of the parcel: “*The figure PB12, MV213, MT982, PB15 and PB12 represents 1632 square metres ... of reclaimed land situated at Pointe Conan, Mahe, and filed in the office of the Director of Surveys as H5013*”. He also produced **Exhibit D9** - the Notice of first Registration dated of Title No. H5013 12th January 2000 of an extent of 1632 square metres in the name of Mr. Benjamin Choppy with a qualified title. These exhibits show that H5013 came into existence in 1999 and was registered in the name of the respondent in January 2000, when the parties had long been separated. The cross examination of the petitioner shows that she did not even know that the parcel was reclaimed, or even when it was acquired by the respondent. She admitted being unaware of the facts surrounding the acquisition of that plot because the parties were no longer living together at that time.
- [206] The respondent testified that after the reclamation was completed, he refurbished the place, added a swimming pool, a pool bar and a snack shop using his own money, money obtained by a loan and with the help of his family. Given that that he took a loan around 1998 immediately prior to the reclamation for the “*construction of additional rooms and upgrading the Hotel*” as evidenced by **Exhibit D4**, this loan was most likely used for the reclamation and upon its completion the extension of the complex located on H1829 onto H5013.

[207] Given that at the time of the reclamation and the development on H5013, the parties were separated and each living their own lives, it is highly unlikely that the petitioner made any contributions thereto. Furthermore, by then both their children were already of an age where they were almost certainly in employment and the petitioner no longer needed to provide for them. In the circumstances I find that she is not entitled to a share of the proceeds of H5013.

Decision

[208] On the point of law raised by the respondent, I find that the filing of the petition out of time without seeking leave of the Court is fatal to the petition which, on that basis, stands dismissed.

[209] On the merits, this Court has found that the petitioner is entitled to a share in the proceeds of H1829 (of 2160 sq. metres) and the development thereon, but that she is not entitled to a share in the proceeds of H5013 (of 1632 sq. metres) and the part of the development thereon. This is based on the monetary and non-monetary contributions of the petitioner to the household and family before the petitioner went to England, during the absence of the petitioner while he was in England and after he came back to Seychelles for the period that the children were not yet financially independent. Her entitlement is to be calculated taking into account that the respondent financed the acquisition of H1829, its extension by reclamation and the construction of the development thereon as well as renovations to the complex at different points in time. The respondent has also given money to the petitioner on several occasions after he returned to Seychelles as financial assistance upon her request, although the exact sum is unknown. Furthermore, the petitioner has admitted receiving SCR75,000.00 upon the sale of parcels H1829 and H5013. These sums of money given to the petitioner should be deducted from her entitlement.

[210] However, a difficulty arises in the computation of the share of the petitioner in the proceeds of H1829 in that the development is located on both parcels which were sold as a whole for a total sum of SCR20,000,000.00. No valuation was presented to the court of either of the parcels or the part of the development/complex on each parcel. The Court

does not know with certainty what part of the development each parcel contains or their value. It is up to the party making a claim to prove such claim and therefore it was up to the petitioner to bring separate valuations of H1829 and H5013 and the developments on the respective plots at the time they were sold in 2011. Instead the petitioner sought to have a valuation of the whole property ordered by the Court after commencement of proceedings in July 2018 some 7 years after it left the hands of the respondent, which the Court declined to make for the reasons given.

[211] Although on the merits this Court is of the view that the respondent is entitled to a share in the proceeds of sale of H1829, without a separate valuation of both parcels, it is impossible for it properly assess the share of the SCR20,000,000.00 to which the respondent is entitled.

[212] In any event, in view of the Court's finding in regards to the point of law raised by the respondent that the filing of the petition out of time without seeking leave of the Court is fatal to the petition, such assessment would serve no practical purpose.

213. The petition is dismissed and the parties shall each bear their own costs.

Signed, dated and delivered at Ile du Port on 30 June 2022.

Carolus J