

SUPREME COURT OF SEYCHELLES

Reportable

[2023] SCSC
(MA No. 250 of 2020)
Arising in: DV 224 of 2019

In the matter of:

Noemie Margaret Gobine (nee Louise)
(rep by Mr. K. Shah assisted by Ms. Afif)

Applicant

Versus

Andy Gobine
(rep by Mr. C. Lucas)

Respondent

Neutral Citation: *Noemie M. Gobine (nee Louise) v Andy Gobine* (MA No. 250 of 2020)
Arising in DV 224 of 2019 [2023] SCSC (2nd June 2023)

Before: Andre JA (sitting as a Judge of the Supreme Court)

Summary: Adjustment of property – Section 20 (1) (g) of the Matrimonial Causes Act
(Cap 124)

Heard: 25 April 2023 (Filing of written submissions of the Respondent)

Delivered: 2 June 2023

ORDER

The Court makes the following orders:

- (i) The property adjustment is made in favour of the Respondent.
- (ii) The Respondent shall pay Two Million and Nine Hundred and Ninety-Five Seychelles Rupees (SCR 2,000,995.00) to the Applicant for her 50% share in the matrimonial property, and such payment shall be made within three months of the date of this Order.
- (iii) The Respondent shall pay in full the remainder of the loan within three months of the date of this Order.
- (iv) Following the full payments in (ii) and (iii) above, the Applicant's name shall be removed from the title of C7623 and the Land Registrar is

ordered to effect the same accordingly.

- (v) Where the Respondent has failed to meet the payments in (ii) and (iii) above, the Applicant may instead buy out the Respondent for his 50% share of SCR 2,000,995.00 within three months and simultaneously bear the responsibility to pay off the loan as the sole owner of C7623.
- (vi) Where the Applicant fails to buy out the Respondent in the three months in accordance with (v) above, the property C7623 shall be sold by licitation and the parties shall equally pay the loan due at the time of the sale and distribute the proceeds as per above distribution as ordered.
- (vii) Both parties shall bear their own costs.

RULING

ANDRE JA

(Sitting as a Judge of the Supreme Court)

Introduction

[1] This Ruling arises out of an application made by Noemie Margaret Gobine, (hereinafter referred to as the Applicant), seeking that this Court makes an adjustment of property registered under title C7623 in her favour. Andy Gobine (hereinafter referred to as the Respondent), resists the application and files a cross application under Section 20 (1) (g) of the Matrimonial Causes Act (Cap 124). The Respondent prays that this Court makes an order for adjustment of property in his favour. The parties were previously married and their marriage was dissolved on 1 October 2020.

[2] Both parties filed writte submisisons of which due consideration have been taken thereof for the purpose of this Ruling.

Applicant's case

[3] The Applicant avers that she and the Respondent are registered co-owners in a plot of land in Au Cap, the title of which is C7623. This property was purchased in October 2010 following the Respondent's contribution to the full purchase price of SCR 68,700.00. That in the same month, the Applicant took a loan of SCR 1,200,000.00 from the Central Bank of Seychelles to finance the building of a four-bedroom house. The construction of the house was completed in 2012. It is the Applicant's submission that she was the only one contributing to the re-paying of the loan.

[4] The Applicant avers that in December 2018, due to domestic violence, she was forced to leave the property leaving the Respondent residing therein. That despite not living in the house, she still re-pays the loan by herself.

[5] Further to the above, the Applicant avers that while the marriage subsisted, the Respondent purchased another plot of land under Title C6225 in June 2018. That in October of the same year, the Respondent sold it for SCR 677,000.00 and that the Applicant never received monies as a result of the sale of the property.

[6] That in the circumstances, the Applicant is entitled to property title C7623 and that this Court makes an adjustment order in her favour.

Reply and cross-application by the Respondent

[7] The Respondent resists the application. He avers that the Applicant was added as a co-owner of the property (C7623) to enable her to obtain a low interest and long term housing loan. That any re-payment of the loan solely by the Applicant was pursuant to an agreement between the parties including that the Respondent would bear all the living and household expenses of the family.

[8] The Respondent denies the claim of domestic violence as a push factor for the Applicant to move out of their matrimonial home. That the Applicant had been carrying substantial improvements and construction at her mother's house with funds that could have otherwise been spent to alleviate the financial burden of the Respondent who had to spend all his earnings on the improvement, maintenance and beautification of the matrimonial home.

[9] Further to the above, it is the position of the Respondent that the marriage was in the process of breaking down since June 2018 and that by October 2018 it has irretrievably broken down. That the acquisition of C6225 was due to proceeds of a Bank loan and that the same property was sold to re-pay the bank loan.

[10] Moreover, the Respondent avers that since the Applicant has built a house at her mother's place, the transferring of property into the Applicant's name is devoid of merit, unjust and unrealistic as it awards her two residences while the Respondent ends up homeless.

[11] In the cross-application, the Respondent avers that the Applicant was never party to the application for purchase of property C7623. That it was he Respondent who solely supervised works, liaised with the contractor, electrician and plumber and also maintained and gradually improved the landscape in excess of SCR 3,000,000.00. That all the improvements were facilitated by his personal funds and income. The Respondent avers that he had to liquidate his business in order to make improvements to the matrimonial home and such improvements cost him SCR 500,000.00.

[12] Further to the above, the Respondent avers that the Applicant never contributed to the household or the marriage except for the loan re-payments which she would have never been eligible to receive unless a co-owner as the Respondent had facilitated.

Issues

[13] In view of the Application and cross-Application thereafter, I consider the main issues to be determined by this Court as follows:

- i. *What are the shares of each party in the property;*
- ii. *Who between the parties is entitled to retain the matrimonial home;*
- iii. *What is the valuation of the property for purposes of adjustment in favour of the party identified in (ii) above.*

[14] Where the party identified in (ii) above is the Respondent, the fate of the loan has to be determined by this Court as justice would dictate.

The Law

- [15] Section 20 of the Matrimonial Causes Act provides for ancillary relief upon divorce and gives the court the power to order a settlement as appears appropriate to remedy an unfairness upon divorce. It reads as follows:

Financial relief

20. (1) Subject to section 24, on the granting of a conditional order of divorce or nullity or an order of separation, or at any time thereafter, the court may, after making such inquiries as the court thinks fit and having regard to all the circumstances of the case, including the ability and financial means of the parties to the marriage-

...

g) make such order, as the court thinks fit, in respect of any property of a party to a marriage or any interest or right of a party in any property for the benefit of the other party or a relevant child.

- [16] The Court of Appeal in *Renaud v Gaetan* SCA 48/1998 stated the following regarding the Court's powers under section 20 (1) (g) which I consider relevant and necessary to draw upon in determining the present case:

“the powers of the Court pursuant to Section 20 (1) (g) of the Act must be read within the context of the totality of Section 20 of the Act which is designed for the grant of financial relief. Such relief may consist of a periodical payments (Section 20 (1) (d) or lump sum payment (Section 21 (1) (e)) for the benefit of relevant child or property adjustment order (Section 21 (g).)

The purpose of the provisions of the subsections is to ensure that upon dissolution of the marriage, a party to a marriage is not put at an unfair disadvantage in relation to the other, by reason of the breakdown of the marriage and or as far as possible, to enable the party applying to maintain a fair and reasonable standard of living, commensurate with or near the standard the parties have maintained before dissolution.”

- [17] In *Charles v Charles* (2004-2005) SCAR 231 established that where the parties own a house jointly, it is presumed that they intended to own the house in equal shares. The Court, however has a discretion as provided by Section 20 (1) (g) of the Matrimonial Causes Act to make orders to settle matrimonial property and such discretion is a judicial discretion that must be made in consideration of relevant factors.
- [18] The starting point is that there are equal shares: see *Serret v Serret* (2012) SLR 112. From this, the court can proceed to assess on the facts and evidence before it the adjustment of the shares. One has to be aware that while it is easy to assume financial contributions are the most relevant consideration, the Court of Appeal in *Arissol v Pillay* (SCA 31/2018 (Appeal from MA322/2016 arising in DV 78/2015)) [2021] SCCA 6 (30 April 2021) have previously criticised such an approach and affirmed that contributions cannot be measured in purely monetary terms as was previously held in *Chetty v Emile* SCA 11/2008 SCAR (1998 – 1999) 65.
- [19] In terms of who gets to retain the matrimonial home, there are a plethora of cases to consider in this regard to assist this Court in its exercise of discretion under Section 20 (1) (g) of the Matrimonial Causes Act.
- [20] In *Padayachy nee Thelermont v Padayachy* (MA 82/2015) [2018] SCSC 690 (18 July 2018) the land parcel belonged to petitioner solely, while the home built on it was jointly owned by the parties. The Court therein observed contributions by the Petitioner which were in the forms of loan repayments and contributions by the Respondent which were household needs such as all utility bills and expenses. The Court considered it necessary in the circumstances to award equal shares in the property between the parties. Apart from this, the Court in *Padayachy* (supra) relied on *Esparon v Esparon* SCA 12/1997 to provide some guidance in respect of exercising the Court’s discretion and stated at paragraph [22] that:

“[22] In exercising its broad discretion, the Court may consider, *inter alia*, ‘who paid the purchase price and the loans for the family home as well as the

a) Standard of living before the breakdown of the marriage;

b) Age of the Parties;

c) Duration of the Marriage;

d) Physical and mental disability of either party;

e) Contributions made by each party to the welfare of the family, including housework and care roles; and

f) Any benefits which a party loses as a result of the divorce’.

(Reference is made to (Esparon v Esparon, SCA 12/1997))”

[21] In the case of *Estico v Estico* (81 of 2005) [2007] SCSC 39 (30 October 2007) the Court considered it necessary to permit the party who remained in the matrimonial home the first choice to buy out the other within 30 days. A similar approach was taken in the case of *Dijoux v Dijoux* (DC 49 of 2005) [2013] SCSC 1 (30 January 2013) where the party who remained in the matrimonial home was permitted to retain the home and the other party to be compensated for his share. What is also important to draw on in the case of *Dijoux* (supra) is that the discretion of the Court must be exercised judiciously, being reasonable in the circumstances of the case. To this, the Court in *Dijoux* relied on the dictum by Lord Greene in *Cumming v Danson* [1942] 2 All ER 653, where he stated:

“In considering reasonableness, it is in my opinion perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing that he must do, in what I venture to call, a broad common sense way as a man of the world, and come to his conclusion giving such weight, as he thinks right to the various factors in the situation. Some factors may have little or no weight; others may be decisive but it is quite wrong for him to exclude from his consideration matters which he ought to take into account.”

[22] In respect of the value of the property, the Court is ordinarily guided by a Valuation Report (see *Padayachy* (supra)). In *Cushion v Mein* (SCA 44/2019 (Appeal from CS 164/2014)) [2022] SCCA 26 (29 April 2022) the Court of Appeal affirmed the decision of the trial Judge to accept both reports and working with an average thereon. This Court is guided by the same in view of the two Valuation Reports provided by the parties in the present case.

Decision of this Court

- [23] In consideration of the above-mentioned cases, the point of departure when determining the shares of the parties in the matrimonial property is 50/50. The Court has a wide discretion under section 20 (1) (g) of the Matrimonial Causes Act with regards to property adjustment orders. And as the cases above show, there are factors such as contributions by the parties (both financial and in kind), age of the parties; duration of the marriage; physical and mental disability of either party; or any benefits which a party loses as a result of the divorce.
- [24] In the present case, the parties were married for 15 years, although last two years of marriage, being separated. They have a child and had built a home together where they resided for several years before the separation. It is not disputed that the land was purchased by the Respondent and the Applicant was added to the transfer deed. Therefore, parties own the property jointly.
- [25] The Respondent in his Reply to the Application averred that the Applicant was added as co-owner to enable her to obtain a low interest and long term housing loan from her employer which she would have otherwise not have had access to. Furthermore, it was the position taken in the written submissions that that the Applicant was only added to the transfer deed because “*she threatened to sever their relationship should he (the Respondent) fail to acceded to her request*”. During his testimony, the Respondent indicated that it was not his initial intention to register the Applicant as co-owner and that he was put under pressure. However, few questions prior to that, the Respondent also stated that it was the Applicant who suggested to put both their name because they were married and that the Respondent at that time “was in love with her” and “had no other option” so he put her name on the deed. In my opinion, these claims have been made to attempt to rebut the presumption that the parties intended to own the plot of land jointly. I am however unpersuaded by the submissions in this regard because the loan that was obtained benefited both parties. In essence, the Applicant brought the financial muscle to develop the land that was in both hers and the Respondent’s name. In the circumstances,

it cannot be said that there was no intention that the property be owned jointly to warrant this Court to determine otherwise.

[26] The parties also submitted their respective financial contributions to the property, which this Court has taken into account and considered. However, as the earlier cited case law has brought about, financial contributions are not the only consideration that this Court takes into account. I find the case of *Chetty v Emile* SCA 11/2008 SCAR (1998 – 1999) 65 to be necessary to refer to at this juncture. The Court at paragraph [30] said:

"[30] 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. [...]. We also find it difficult to accept that once a party makes a choice of his or her partner and decides to live together as husband and wife, one party cannot be heard to say that I had the better job or I am a person who brought in more money when the relationship goes sour as the respondent has done in this case. The position certainly would be different if there was evidence to the effect that one party squandered the wealth or deliberately omitted to do what is reasonably expected of that party as a spouse." (Emphasis mine)

[27] Both parties in the present case had their part to play in the accumulation of the matrimonial property and sustaining it thereafter. I therefore consider that the shares owned by each party is 50/50.

[28] Having found the shares due to each, the next thing to be determined is who between the parties should have a property adjustment in their favour. The running theme in the cases of *Estico* (supra) and *Dijoux* (supra) was that the Court decided in favour of the party who remained in the matrimonial home. In the present case, the Applicant claims that she left the matrimonial home due to domestic violence. This in my opinion can be a reasonable push factor to have any person leave the matrimonial home and would warrant departure from the set precedent in *Estico* and *Dijoux*. However, the Respondent on the other hand disputes the claim of domestic violence.

- [29] On record, there is Exhibit D2 which is a Family Tribunal Order. In it, the Family Tribunal considered the claims of domestic violence to have not been substantiated in order for it to decide in favour of the Applicant. The allegation of domestic violence in the present case also face a similar fate. It was not substantiated before this Court in order for this Court to take it into account to depart from the authorities in *Estico* (supra) and *Dijoux* (supra). The Applicant also had the burden of proving that such occurred because he who avers must prove.
- [30] In the circumstances, and since the Respondent remained at the matrimonial home, the property adjustment can be made in his favour.
- [31] Having made findings on the shares and who between the parties can have a property adjustment in their favour, it is now for this Court to decide on the value of the property and determine what is due to be paid to the Applicant for her share.
- [32] Both parties have submitted Valuation Reports and therefore this Court has two reports to consider. The report adduced before this Court by the Applicant (Exhibit P1) values the property at four million, one hundred and eighty-nine thousand Seychelles Rupees (SCR 4,189,000.00). On the other hand, the report adduced by the Respondent (Exhibit D17) puts the value of the property at three million eight hundred and forty-six thousand, nine hundred and eighty Seychelles Rupees (SCR 3,846,980.00). In both instances, the value estimate is for both the land and house. Based on the authority in *Cushion v Mein* (supra), I consider that an average of the two evaluations is sufficient to determine the value of the Applicant's share and what would be due to her.
- [33] The fate of the loan is one which this Court cannot disregard. The loan for the house was obtained in the name of the Applicant for One Million Seychelles Rupees (SCR 1,100,000.00). There is a letter of approval for this, dated 9 June 2011 (Exhibit P8). A further loan of Hundred Thousand Seychelles Rupees (SCR 100,000.00) was obtained and there is a letter of approval dated 28 March 2012 (Exhibit P7) to prove the same. Monthly repayments of the loan were paid by the Applicant starting with SCR 6,416.67.00 in December 2011. Similar payments were made each month since then, with the last paid amount being SCR 5,334.91 for November 2020 (Exhibit P9) and what has

been paid since then is SCR 754,594.22. The remaining amount of loan to be repaid is SCR 874,717.73 including interest.

[34] The loan must be repaid, and the question is since the Respondent will retain the property buying out the Applicant, should the Applicant continue to be burdened by this loan following the apparent property adjustment decision against her? In my view, it is just in the circumstances that the Respondent bears the sole duty to repay the loan that attaches to the property that has been adjusted in this favour.

Conclusion

[35] Against the above analysis, the Application stands dismissed and the Cross-Application partially succeeds.

[36] The value of the property stands at Four Million and Seventeen Thousand, Nine Hundred and Ninety Seychelles Rupees (SCR 4, 017,990.00), an average of the two sums presented by the two evaluation reports.

[37] The Court orders as follows:

- i. The property adjustment is made in favour of the Respondent.
- ii. The Respondent shall pay Two Million and Nine Hundred and Ninety-Five Seychelles Rupees (SCR 2,000,995.00) to the Applicant for her 50% share in the matrimonial property, and such payment shall be made within three months of the date of this Order.
- iii. The Respondent shall pay in full the remainder of the loan within three months of the date of this Order.
- iv. Following the full payments in (ii) and (iii) above, the Applicant's name shall be removed from the title of C7623 and the Land Registrar is ordered to effect the same accordingly.
- v. Where the Respondent has failed to meet the payments in (ii) and (iii) above, the Applicant may instead buy out the Respondent for his 50% share

of SCR 2,000,995.00 within three months and simultaneously bear the responsibility to pay off the loan as the sole owner of C7623.

- vi. Where the Applicant fails to buy out the Respondent in the three months in accordance with (v) above, the property C7623 shall be sold by licitation and the parties shall equally pay the loan due at the time of the sale and distribute the proceeds as per above distribution as ordered.
- vii. Both parties shall bear their own costs.

Signed, dated, and delivered at Ile du Port on the 2 June 2023.

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ANDRE JA
(Sitting as a Judge of the Supreme Court)