

SUPREME COURT OF SEYCHELLES [

Reportable

MA 298/2017
Arising in DV 20/2016)

In the matter between:

WALTER PILLAY
(rep. by Joel Camille)

Petitioner/ Cross-Respondent

and

LUSITA PAQUERETTE LABLACHE
(rep. by Karen Domingue)

Respondent/ Cross-Petitioner

Neutral Citation: *Pillay v Lablache* (MA298/2017) [2024] (19 January 2024).

Before: Carolus J

Summary: Matrimonial Property Settlement – Matrimonial Causes Act

Heard: 20 September 2019, 10 & 17 September 2020, 8 & 13 October 2020, 17 May 2021, 19 July 2021, 5 October 2021

Delivered: 02 February 2024

ORDER

1. In accordance with section 22(1)(b) of the MCA, the transfer of parcel V1332 to Kimberley and Iouanna Pillay is set aside so that full ownership of the property reverts to Mr Walter Patrick Pillay. The Land Registrar is directed to make the necessary entries in the relevant registers to give effect to this Order not later than one month of the date of this judgment.

2. Thereafter but not later than three (3) months after the date of this judgment, Mr Walter Patrick Pillay shall transfer Title V1332 and the building thereon including the encroachments on the adjoining Government land to Ms Paquerette Lablache, and vacate the property. The costs of transferring the property including notarial fees as well as stamp duty and registration dues shall be borne by Mr Pillay for the reason given above. For the avoidance of doubt, Mr Pillay shall not be under any obligation to pay rent for the premises during the aforementioned period of three (3) months. For further avoidance of doubt Mr

Pillay shall have no rights over Title V1332 and the building thereon including the encroachments on the adjoining Government land after the expiry of the aforementioned period of three (3) months.

3. The Government through the Ministry of Lands & Housing is directed to transfer the subsisting lease of parcels V15988 & V15989 from Mr Walter Patrick Pillay to Ms Paquerette Lablache not later than three (3) months after the date of this judgment, and in the event that such lease has expired to enter into a new lease in respect of those parcels with Ms Lablache within such period of three (3) months.
4. Any lease/tenancy agreements for the lease/ rent of the building on V1332 including the encroachments on the neighbouring parcels or part thereof, subsisting at the date of this judgment shall, terminate at the expiry of three (3) months after the date of this judgment, and new agreements entered into between Ms Lablache and the previous lessees/tenants shall become effective upon such termination. The new agreements shall be on the same terms and conditions as those provided in the previous agreements or such other terms and conditions as the parties may agree to, and unless otherwise agreed by the parties the term of the lease/tenancy under the new agreements shall not be such that the new leases/tenancies will end at an earlier date than the previous leases/tenancies would have ended. The foregoing shall be subject to any termination clauses in the lease/tenancy agreements. All rent payable under the new agreements for the period starting at the expiry of 3 months from the date of this judgment shall be paid to Ms Lablache.
5. Ms Paquerette Lablache shall transfer her half share of H1345, H6465 and H6466 to Mr Walter Patrick Pillay, and vacate the house on H1345, not later than six (6) months after the date of this judgment. The costs of transferring the property including notarial fees as well as stamp duty and registration dues shall be borne by Mr Pillay for the reason given above.
6. The parties shall each bear their own costs.

7. This judgment is to be served on the Land Registrar, the Government represented by the Ministry of Lands & Housing for compliance with the above orders and to the current lessees/tenants of the building on V1332 to give them notice of the same.
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JUDGMENT

CAROLUS J

Background, Pleadings & Affidavit Evidence

[2] Walter Patrick Pillay (“the petitioner/ counter-respondent”) and Lusita Paquerette Lablache (formerly Pillay) (“the respondent/ counter-petitioner”) were married on the 30th August 2003. They have three children born of their relationship, the two eldest being Iouanna (36 years) and Kimberly (24 years) who are in employment, and the youngest being Inesh (17 years) who is studying at post-secondary level. This Court granted them a conditional order of divorce on 17th February 2017 which was made absolute on 12th October 2017. The petitioner has now filed a petition seeking “*an order to adjust the [matrimonial property of the parties], allowing Petitioners (sic) sole occupation of the property, namely land parcels H1343 situated at Pointe Conan & H1345 situated at Majoie, Mahe and further to be declared as the sole owner thereof*”.

[3] In particular the petitioner seeks the following orders:

An order in respect of properties, H1343 & H1345 namely the matrimonial home, (rule (4)(1)(f)

AND

An order relating to the occupancy by the Petitioner and the Respondent of the said matrimonial home; rule 4(1)(j).

AND

An order for the Respondent to vacate the home and restraining the Respondent from entering and remaining in the matrimonial home: rule 4 (1) (h) (i)

[4] The petition is supported by an affidavit sworn by the petitioner to which supporting documents are attached. In his affidavit he avers that he owns land parcel H1343 of an extent of 1,162 sq. metres, situated at Pointe Conan which is undeveloped. H1343 was

registered on 3rd February 2005 while he was still married to the respondent. He avers that he solely financed the purchase of H1343 by taking a loan of SCR100,000.00 from the Mauritius Commercial Bank of Seychelles (“MCB”) on 13th October 2004.

[5] He avers that he also owns land parcel H1345 of an extent of 737 sq. metres, situated at Majoie, on which stands a semi-detached house. H1345 was transferred to the petitioner and the respondent on 24th January 2003 prior to their marriage. The purchase of H1345 was financed solely by him by means of a loan of SCR301,000.00 borrowed from the MCB on 8th August 2002. He further avers that he has solely kept the house on H1345 in good repair renovating it whenever necessary, but that the respondent currently lives in one section of the house.

[6] The petitioner then goes on to aver that the parties “*have an undivided share of ownership of both land parcel H1343 and H1345*” and that it is reasonable for the respondent to be ordered to vacate parcel H1345 and the house thereon. He states that he “*hold[s] and it should be declared that 100% beneficial and lawful interest is transferred to [his] sole name*”.

[7] The respondent did not file an answer to the petition but filed a counter-petition seeking the following orders:

- a. *An order that all the properties belonging jointly and solely to and including those disposed of by the Counter-Respondent to his children be valued;*
- b. *An order that the Counter-Petitioner is awarded a half share in all the properties both by being awarded a monetary share and being awarded either of the following properties:*
 - (i) *The properties at Majoie, namely Titles H1345, H6465, H6466 with the houses thereon solely; or alternatively*
 - (ii) *Title V1332 with the building thereon;*
- c. *Any other orders that this Honourable Court deems fit and proper in the circumstances of this case.*

- [8] Paragraph (b)(i) of the counter-petition was amended to add Titles H1346, H2307 and H6638 in that paragraph (see pg 1, proceedings of 10th September 2020). The addition of these parcels to paragraph (b)(i) would mean that the counter-petitioner is seeking to be awarded sole ownership of these parcels in addition to a half (monetary) share in the other parcels owned solely or jointly by the counter-respondent including those transferred to his children (para b.), and in the alternative to being awarded sole ownership of V1332 and the building thereon (para b.(ii)). However it does not appear that this is the intention of the counter-petitioner as at the hearing she waived her right to the land comprised in H1346 and only maintained her claim to a share in the buildings therein. In any event Titles H1346, H2307 and H6638 would be covered under paragraph b. in which the counter-petitioner seeks a half (monetary) share in the other parcels owned solely or jointly by the counter-respondent including those transferred to his children.
- [9] The counter-petition is supported by an affidavit of the counter-petitioner/ respondent to which are attached a number of documents. In her affidavit she avers that when she met the counter-respondent in 1981, she already had a daughter from a previous relationship (“1st daughter”). She started living with the counter-respondent at the age of 18 years and lived with him for 36 years, inclusive of the years they were married. They have three children, born in 1988, 1995 and 2002 respectively.
- [10] When she started living with the counter-respondent, she was working as a supply teacher and earning a salary of SCR700 per month. From 1984 to 2008 she was employed by the Ministry of Education in various positions namely as a Primary Teacher Art Specialist, an Assistant Curriculum Development Officer, a Graduate Art Teacher in Secondary School, a Graduate Art Instructor in Post-Secondary Institution and a Senior Instructor. During that time her salary increased and by the time she left employment in 2008 she was earning SR 10,000 per month. During the time she was employed by the Ministry of Education, she went for further studies in Greece and the United Kingdom (UK). While she was away she still earned part of her salary which was partly used to maintain her 1st daughter, and partly saved. Her savings were eventually spent on the parties’ family and home. Besides her income from the Ministry of Education, she also earned an average of

SCR12,000.00 per month from her fashion, design and tailoring business that she started in 1995. She also avers that she received a gratuity of SCR30,000.00 from the Ministry of Education in 2004, that she used to pave outside the home and improve the garden. When she left the Ministry of Education on 1st February 2008, she was paid compensation of SCR147,788 which she invested in the parties' home and her business. From February 2008, when she started working on a full-time basis in her business, she earned an average of SCR200,000.00 to SCR300,000.00 per year, which she re-invested in her business and the matrimonial home.

- [11] During the marriage and co-habitation of the parties, the counter-respondent purchased Title H1346 on which they built their matrimonial home. While the counter-respondent paid for the land, the counter-petitioner contributed towards building the house by helping with the site clearing and assisting the counter-respondent generally. She also purchased house-hold items such as curtains, towels, cutlery, etc. The utilities and household expenses were paid for jointly.
- [12] The counter-petitioner avers that when the parties started occupying the matrimonial home in 1981, the house was a two bedroom, two-bathroom house. Over the years while occupying the house, they added another storey comprising 4 more rooms and 3 bathrooms. The improvements were made jointly and the parties both cared for the children and paid their school fees.
- [13] When the counter-petitioner was studying overseas, the counter-respondent also built a store on Title H1346. After completion of her studies, the parties built another storey on top of the store for the counter-petitioner to use as a studio. In 2010, another storey was added to the studio. The counter-petitioner borrowed and repaid two loans of SCR80,000.00 and SCR250,000.00 respectively to help with building the studio/workshop above the store which she used.
- [14] The counter-petitioner avers that Title H1346 which is considered the parties' matrimonial home, was originally registered in the sole name of the counter-respondent, but that in the process of their divorce on the 19th August 2016, the counter-respondent

transferred the property into the names of the parties' minor son and daughter without her knowledge.

[15] When the counter-petitioner returned from her studies, she applied to the Government for a parcel of land and Title H1345 on which stood a 4-bedroom house, which was registered in the joint names of the parties. In 2005, the parties applied to purchase another property from the Government pursuant to which Titles H6465 and H6466 were transferred into their joint names in the same year.

[16] The parties converted the house on Title H1345 into a semi-detached house of two units. This was financed through a loan of SCR600,000.00 borrowed by the parties and repaid by the counter-respondent with the assistance of the counter petitioner. The semi-detached house was rented out to the Ministry of Education and the money obtained used to repay the loan which has been completely re-paid. Currently one of the units is being occupied a family member of the counter-respondent while the counter-petitioner has been occupying the other one since September 2016 when the parties separated.

[17] In 2006, while she was considering leaving her employment with the Ministry of Education, the counter-petitioner approached one of her relatives to sell her Title V1332 situated at English River and the house thereon, for the purpose of running her business, pursuant to which the parties purchased Title V1332 in February 2006 by means of a loan. The building was used for the counter-petitioner's fashion business until 2009, after which they rented it out and used the rent money to repay the loan. While the parties were going through the divorce process, the bare ownership of this property was also transferred to their minor son and their daughter without the counter-petitioner's knowledge, with the counter-respondent retaining his usufructuary interest therein. The counter-petitioner avers that since approximately two years, the counter-respondent is renting out the building on Title V1332 in the sum of SCR70,000.00 per month and that he is benefitting solely from such rental, save for a period of approximately 9 months when he gave her a sum of SCR5,000.00 per month.

[18] The counter-petitioner avers that in 2012 and 2015, the counter-respondent purchased Titles H2307 with a house thereon and H6638 and registered these two titles solely in his

name. In 2016 he transferred both properties to the parties' son and daughter whilst keeping the usufructuary interest therein, without the counter-petitioner's knowledge.

[19] In 2008, the counter-respondent bought the bare-ownership in Titles V9192 and V9193 with his father retaining the usufructuary interest in both parcels.

[20] The counter-petitioner avers that other than the half share that she holds in Titles H1345, H6465 and H6466, she owns no other properties. Furthermore these three properties are controlled by the counter-respondent and she only has access to one unit of the semi-detached house on Title H1345 and part of the studio/workshop on Title H1346. The counter-respondent on the other hand has Titles V9192, V9193, H1346, H6638, H2307 and V1332. She states that although he only has the usufructuary interest in these properties (except for V9192 and V9193), he is the one who owns, controls and benefits from them. The counter-petitioner avers that the counter-respondent has attempted to defeat her claims by transferring the bare-ownership of Titles of H1346, H6638, H2307 and V1332 to their children since the parties' separation, which shows bad faith on his part. She further avers that the only properties that the cross-respondent has not been able to cheat her out of are those which they own jointly and those which he believes she will not claim because they belonged to his father.

[21] The counter-petitioner avers that she is 56 years old and that it will be difficult for her to start over without a fair share of the matrimonial property. She avers that she is entitled to a share in all properties and buildings on all the properties which the parties acquired and built during their co-habitation and marriage, including the matrimonial home and the properties which have been transferred to their children.

[22] The counter-petitioner further avers that she assisted the counter-respondent in setting up his company by acting as a shareholder and director, but never received any remuneration from his business.

[23] No reply was filed to the counter-petition by the petitioner/ counter-respondent.

Testimony of Witnesses & Submissions

[24] The petitioner/counter-respondent Mr Walter Pillay (“Mr Pillay”) and Mr Dereck Accouche a quantity surveyor (“QS”) testified on behalf of Mr Pillay. The respondent/counter-petitioner Ms. Pacquerette Lablache (“Ms Lablache”), Mr Octave Tirant, Ms Cherley Dubel representing the Mauritius Commercial Bank (Seychelles) Limited (“MCB”) and another QS Mr Nigel Stanley Valentin gave evidence on behalf of Ms. Lablache.

[25] Although counsels for both parties were given the opportunity to file written final submissions after the hearing, they did not do so.

Testimony of Mr Walter Pillay

[26] Mr Pillay’s testimony in regards to each of the properties subject matter of the petition and counter-petition before this Court will be dealt with individually below. Although his petition is made only in respect of Titles H1343 and H1345, his evidence also deals with all the properties in respect of which Ms Lablache has counter-petitioned.

Parcel H1346 with matrimonial house thereon (Majoie)

[27] Mr Pillay testified that the main house comprising 6 rooms which he currently occupies with Inesh is located on parcel H1346. He purchased H1346 when he was 18 years old and employed by Cable and Wireless. Although at the time of the purchase he had met Ms Lablache, he had not yet started living with her, but lived with his parents at either St. Louis or English River. He only started co-habiting with her after she returned from her studies in Greece when he was around 24 or 25 years of age (i.e. around 1985 as he was born on 25th June 1961). He married Ms Lablache on 30th Aug 2003 at the age of 42 years old. He financed the purchase of H1346 with a loan from Barclays Bank which he repaid by direct salary deductions. He built a house on H1346 with a loan of SCR50,000.00 from the Seychelles Credit Union. He solely repaid both loans with no contributions from Ms Lablache

[28] Mr Pillay also built a two-storey studio at a distance of 1 to 1 ½ m from the back of the house one or two years after the main house was built, which he stated was 25 years ago. Initially it was small and had only one storey but was later extended and another storey

added. The ground floor is an open area where Ms Lablache carries out printing work. Mr Pillay built the studio with money that he earned as an electrical contractor – a business which he started more than 30 years ago after ceasing to work with Cable and Wireless. Ms Lablache who was working with the Ministry of Education at the time did not contribute to the construction of the studio.

- [29] Mr Pillay testified that he is currently extending the studio to add two bedsitters for him and his son, and two apartments to house foreigners which he intends to employ. He started the construction 20 years ago and financed it from the salary that he pays himself from his business – hence the reason that it is taking such a long time. Depending on contracts he is awarded he earns from SCR28,000 to SCR35,000 or more per month. The construction of the bedsitters and apartments is nearly complete but he had to stop the works because Ms Lablache reported him to the Planning Authority for building without planning permission. He is now doing the necessary to obtain planning permission.
- [30] He produced Exhibit P1 – A transfer deed dated 23rd July 2016, registered on 9th August 2016 showing that he transferred H1346 and H6638 to Kimberley Pillay and Inesh Pillay for SCR1.00, with the transferees granting a usufructuary interest to him for his lifetime. Exhibit P1(a) is a Certificate of Official Search dated 22nd May 2017 in respect of Title H1346 of an area of 600 Sq. metres which shows the same thing; Exhibit P1(b) is the cadastral plan of H1346.
- [31] He states that he transferred the bare-ownership of the property to Kimberley and Inesh because Ms Lablache told their children that if he died before her, they would find themselves on the streets, which he took to mean that she would throw them out of the house and they would be homeless. Ms Lablache and the children do not speak to each other and she has not had a good relationship with them for three years since the parties' divorce (October 2017). Mr Pillay claims that he does not remember whether or not Ms. Lablache knew when he transferred the property to the children and does not know when she found out. He does not believe that she should have a share in the property and maintains that he should have the usufructuary interest during his lifetime, after which the property should go to their children.

- [32] In cross-examination Mr Pillay stated that he and Ms Lablache's relationship started in 1981 and reiterated that they started co-habiting after she returned from her studies in Greece. They lived together for about 30 years until their separation in 2016 when she moved out of the matrimonial home.
- [33] Contrary to what he had stated in chief, he stated that when he and Ms Lablache met he had already purchased H1346 and started building the house thereon, but admitted that when Ms Lablache moved into the house with him, it only comprised a ground floor with three bedrooms, and that the second floor was constructed during the period of co-habitation of the parties. He denied that Ms Lablache had helped with the site clearing prior to the construction of the house, although he stated that she did come to the site a few times.
- [34] He states that when he started building the house he was around 20 years old (i.e. 1981) and that it took 5 years to build it so that it would have been completed by 1986, after which he moved into it. At the time Ms Lablache was in Greece. He does not remember exactly when she left for or returned from Greece but remembers that she moved in with him when she came back. When he moved into the house, he used only one room in the house which was the only one with curtains. There was only a bed, a fridge, a stove, a kitchen set, two plates and two cups in the house. Other than that it was empty. When Ms Lablache moved in, the situation was still the same. He and Ms. Lablache contributed 50/50 to buy certain things for the house such as towels, linen, curtains and appliances, as well as food and household expenses. However he maintained that she did not contribute to the construction costs of the building or furnishing it, which he did himself.
- [35] During the period of co-habitation of the parties, Mr Pillay built a top storey to the house comprising four bedrooms with en-suite bathrooms and a verandah, with the help of some workers and without any assistance from Ms Lablache. He stated that he even cooked the food for the workers himself. He funded the construction of that upper floor from money he earned over time and did not take any loans. The top storey was also furnished by him over time.

- [36] Mr Pillay admitted that both he and Ms Lablache cared for and maintained their children. He paid Iouanna's school fees until she left school and Ms Lablache paid Kimberley's until Inesh started school, when he took over paying Kimberley's school fees and Ms Lablache paid for Inesh's. However he stated that only he took his responsibility to provide for the children seriously: every time the children asked Ms Lablache for something she would tell them to go and ask their father. Although she did certain things for them he did mostly everything. He also admitted that Ms Lablache cleaned and took care of the house but claims that he and the children did so as well. He also denied that she purchased any furniture for the matrimonial home or help in paving outside.
- [37] Mr Pillay also admitted that Ms Lablache was employed throughout their relationship and marriage, but stated that she was not earning much as she was only a supply teacher prior to her training in Greece, although he then admitted that she was a fully qualified teacher on her return. According to him she only contributed to buy food and groceries for the family, and he does not know what she did with the rest of her money as he was the one paying the utility and telephone bills and paying off the loan. He maintained that she did not contribute to the furnishing of the house, its maintenance or renovation, paving around it or construction of the top floor.
- [38] Mr Pillay maintained that he transferred H1346 and the matrimonial home to Kimberley and Inesh because every time Ms Lablache got into an argument with the children, she threatened to throw them out on the street if their father died before her. He claims that he kept the usufructuary interest for himself on the advice of the Notary who drew up the transfer document. He admitted that he had also transferred H6638 to Kimberley and Inesh, V1332 at English River to Kimberly and Iouanna, and his bare ownership in H2307 which he had purchased from Francis Ally to Inesh. He further admitted that he had transferred all the properties that he held in his sole name to his children in 2016, except for V9192 and V9193 which are still registered in his name and the bare-ownership of which his father had transferred to him at no consideration and for which he only paid the notarial fees.

- [39] He denied that he transferred the properties to his children to prevent Ms Lablache from obtaining any interest or share therein, and stated that the transfers were for the children's protection, who he pointed out are both his and Ms Lablache's children. It was put to him that while it might be understandable for him to transfer H1346 and the matrimonial home thereon and H6638 to them, the rationale behind also transferring V1332 and H2307 to them was not so clear, to which he replied that V1332 would provide them with an income if he were to pass away. It was also put to him that his actions clearly show that he intended to deprive Ms Lablache of her share of the transferred properties but he maintained that he only transferred the properties for his children's benefit. He also stated that he did not think that Ms Lablache cared for and wanted the best for the children despite it being put to him that she had carried them for 9 months and also cared for them.
- [40] In regards to the income and earnings of Ms Lablache, Mr Pillay agreed that from the time he met her up to 2008, Ms Lablache had always been employed by the Ministry of Education, and that from 1995 she had also been running her own fashion, design and tailoring business which brought her additional income. When it was put to him that her salary of approximately SCR12,000 from the Ministry and the income from her business of approximately SCR10,000 would amount to about SCR22,000.00 per month, he pointed that she would also have expenses associated with running the business. He also claimed that he funded everything for setting up her business down to the sewing machine as she did not have any money. However he could not remember how much he gave her to set up the business nor could he provide any proof of the same. It was put to him that although he may have assisted Ms Lablache in setting up her business, he did not give her everything but he maintained that he did.
- [41] Mr Pillay further admitted that Ms Lablache borrowed two loans of SCR80,000.00 and one of SCR250,000.00, and that she was paid SCR140,000.00 as terminal dues when she left the Ministry of Education. The first loan of SCR80,000.00 is evidenced by Item 1 subsequently produced as Exhibit D8 – a letter of offer dated 22/3/16 from Barclays Bank (Seychelles) Limited to Mangouya Creations represented by Mrs. Paquerette Lablache Pillay for an unsecured business loan of SCR80,000.00, the stated purpose of such loan

being “*FOR WORKING CAPITAL*”. Mr Pillay stated that Ms Lablache used that loan to buy materials overseas to invest in her business. He first stated that he does not recall her borrowing a second loan of SCR80,000.00, but in further cross-examination confirmed that Ms Lablache had obtained a loan of SCR80,000 for the purpose of business expansion.

[42] The loan of SCR250,000.00 is evidenced by Item 2 subsequently produced as Exhibit D9 – a letter of offer dated 9/10/14 from Barclays Bank (Seychelles) Limited to Mangouya Creations represented by Mrs. Paquerette Lablache Pillay for an secured business loan of SCR250,000.00, the stated purpose of such loan being “*TO UPGRADE THE STUDIO*”. The loan is secured by a 1st line charge over property parcel V1332 at English River. However Mr Pillay denied that this loan was used to extend or upgrade the studio at Majoie. He stated that when Ms Lablache started her business at Majoie whilst also working at the Ministry, he had already built the studio although it was small. Even before she stopped working with the Ministry and went full time in her business he had extended the studio to make it bigger so that she had a sewing room and a printing room. He claimed that she had used the loan of SCR250,000.00 to purchase materials for her business, and explained that the bank would not have given her a loan for that purpose hence the reason why the bank was told that the loan was for upgrading the studio. He also stated that she only obtained the loan because he told the bank that she needed the loan to buy materials for upgrading the studio, but when it was pointed out to him that his signature did not feature on Exhibit D9, he stated that he had authorised her to charge parcel V1332 to secure the loan. He further stated that the name Mangouya was only used after the studio had been completed hence the loan to Mangouya could not have been for the studio. Mr Pillay also agreed with counsel that the loans of SCR 80,000.00 (Exhibit D8) and SCR250,000.00 (Exhibit D9) were fully repaid by Ms Lablache. In further cross-examination he stated that banks do not give loans to purchase vehicles and they had to state that the purpose for which the loan was being borrowed was for construction or building materials.

[43] It was put to Mr Pillay that he could not claim that Ms Lablache had no money and he had to give her money to set up her business, when she had been working at two jobs for

13 years from 1995 when she started her business while also working as a teacher up to 2008 when she left her employment with the Ministry of Education, and furthermore after she left the Ministry of Education up to the time the parties separated she had been operating her own business in which she invested the two loans of SCR80,000.00 and the loan of SCR250,000.00. He replied that he gave her the money to start the business and that it is only afterwards she extended the business. He also maintained that she did not invest anything in the studio.

- [44] Mr Pillay admitted that he had produced no documents or shown any proof that he set up or contributed to Ms Lablache's business. It was put to him that on the other hand, Ms Lablache had contributed to his business Walter Pillay & Company (Proprietary) Limited which he denied, further stating that the company had lasted only 2 years and had been closed for a long time, which could be ascertained from the Registration Division. He then conceded when shown Exhibit D1 – Annual Return of the company for the year 2008 – that Pacquerette Lablache holds 2 shares in the company while he holds the remaining 8 and that they are both directors of that company, but maintained that the company no longer exists. He stated that his existing company is Walter Pillay Electrical Contractor and is the only company registered by him. Mr Pillay agreed that forming a company requires two persons and the fact that Ms Lablache is a shareholder of Walter Pillay & Company (Proprietary) Limited shows that she assisted in his business. However he denied that she helped with accounting, with some of the contracts and with contacts with clients.

H1345 with a semi-detached house thereon (Majoie)

- [45] Next to parcel H1346 is parcel H1345 on which there is a semi-detached house which is about 15m from the matrimonial home on H1346. Ms. Lablache occupies one part of the semi-detached house while the other part is occupied by Mr Pillay's mother.
- [46] The Government transferred the land and a house (which was later converted to a semi-detached house) to the parties for a consideration of SCR301,000.000 as shown by transfer deed dated 24th January 2003 and registered on 26th February 2003 - Exhibit P2. The transfer was effected a few months before the marriage of the parties in August 2003.

Exhibit P2(a) is a Certificate of Official Search dated 22nd May 2017 in respect of Title H1345 of an area of 737 Sq. metres, showing Mr Pillay and Ms Lablache to be the proprietors. It further shows a number of encumbrances registered against the parcel including a charge of SCR200,000/- in favour of Banque Francaise Commerciale (Entry No. 5); a charge of SCR400,000/- in favour of The Mauritius Commerciale Bank (Seychelles) Limited (Entry No.6); a charge of SCR250,000/- in favour of The Mauritius Commerciale Bank (Seychelles) Limited (Entry No.7); and a charge of SCR250,000/- in favour of The Mauritius Commerciale Bank (Sey) Limited (Entry No.9). Mr Pillay explained that the charges were to secure loans borrowed for purchasing properties. Exhibit P4(c) is the cadastral plan of property No. H1345 of an extent of 737 Sq. metres.

[47] Mr Pillay stated that Entry No.5 in respect of the charge of SCR200,000/- in favour of Banque Francaise Commerciale in Exhibit P2(a) (Certificate of Official Search) relates to a loan borrowed by him which he initially said was to purchase H1345 and the house thereon. In support he produced:

- Exhibit P3 – a document issued by the Banque Francaise Commerciale dated 8th August 2002 addressed to Mr Pillay stating the following:

*“Nos Réf : 9913/AE/20/0001206 01
HA2 CREDITS HABITAT AMORT PARTICUL
Vos Réf : PURCHASE PROPERTY H1345*

MISE A DISPOSITION

Montant à votre disposition .. 200.000,00 SCR

Reglement par credit de votre compte 00715817002

*du montant de *****200.000,00 SCR*

En valeur : 8/08/02”;

- Exhibit P3B - a statement for a loan account held with Banque Francaise Commerciale in the name of Mr Pillay (*Emprunteur 7158170*) for a loan of SCR200,000/- showing the loan repayments in monthly sums of SCR5,072.52 from 31/08/2002 to 31/07/2006 when the loan was paid in full. Mr Pillay testified that the loan repayments were made by deduction from his bank account.

[48] Mr Pillay then produced a number of documents which he clarified related to the loan actually used to purchase H1345 and the house thereon. These are:

- Exhibit P4 – a letter dated 9th July 2002 from Mr Pillay addressed to the Manager, Banque Francaise Commerciale applying for a loan in the sum of SCR301,000/- for the purchase of a house and land at Majoie;
- Exhibit P4(a) - an “AVIS D’OPERATION” issued by the Banque Francaise Commerciale dated 8th August 2002 addressed to Mr Pillay stating the following:

*“Service; MOYENS DE PAIEMENTS
Date Opération : 8/08/02
N/REF : 9913/MP/50 1543
COMPTE : SCR 00715817002”*

and informing him that *“Nous avons l’honneur de vous informer que nous enregistrons sur votre compte le(s) operations(s) suivante(s)”* namely a transaction in the sum of SCR301,000/- to be paid to *“Maurel Gerard Joseph Client Account”*; and

- Exhibit P4(b) – an “AVIS D’OPERATION” issued by the Banque Francaise Commerciale dated 8th August 2002 addressed to Mr Pillay with the reference:

*“Service; ARRIERE GUICHET
Date Opération : 8/08/02
N/REF : 71/AG/10 15347
COMPTE : SCR 00715817002”*

informing him that *“Nous avons l’honneur de vous informer que nous enregistrons sur votre compte le(s) operations(s) suivante(s)”* namely a transaction in the sum of SCR30,230/- for “RGL NOTAIRE” on behalf of Mr Pillay. He stated that the sum of SCR301,000 was transferred from the bank directly to Notary Maurel for payment to the Government for the purchase of H1345 and the house thereon. He stated that the loan was repaid by deduction from his bank account, with no contributions or assistance from Ms Lablache either to purchase the land and the house thereon, or to convert the original house to a semi-detached one. He denied that Ms. Lablache’s claim that they took a loan

of SCR600,000/- to convert the house on H1345 into a semi-detached house which he repaid with her assistance.

[49] He stated that after the parties purchased the property they rented it out. Mr Pillay's mother moved into one side of the semi-detached house 4 years ago and is still occupying it. Mr Pillay claims that his mother has no other house and if the whole property is awarded to Ms Lablache she would have nowhere to go. Ms Lablache moved into the other side 3 years ago pursuant to an order of the Family Tribunal, and Mr Pillay confirms that she has not repaired or renovated it since.

[50] In cross-examination Mr Pillay reiterated that although H1345 was sold to both him and Ms Lablache, the loan was repaid solely by him. He admitted that the property was purchased after Ms Lablache had returned from her studies, but denied any knowledge that Ms Lablache was entitled to property from the land bank as a returning graduate, or that she did the needful for them to be able to purchase the property from the Government, which he claims was done by him.

[51] He stated that it was not correct to say that the property being from the land bank would not have been available to him as he already owned land. He explained that H1345, although from the land bank, was sold to him because former Minister Herminie who had built the house on that parcel had encroached on Mr Pillay's property which led to constant arguments between them. It was put to him that whilst there was indeed conflict between Mr Herminie and himself, the land from the land bank was only sold to him and Ms Lablache because she qualified for the same as a returning graduate and had no land registered in her name, and that she agreed for his name to be included on the transfer deed. He replied that if that was the case she would have purchased the property herself, and pointed out that the property was paid for by the loan of SCR301,000.00 from MCB (Exhibit P4) which was in his personal name and that Ms Lablache made no contributions to the repayment thereof.

[52] Mr Pillay admitted that prior to his mother and Ms Lablache moving into the semi-detached house, the house was being rented out to the Ministry of Education. However he denied that it was Ms Lablache who sourced tenants from the Ministry where she had

been working. He also denied that the loan to buy the property was repaid by renting out the semi-detached house, and stated that it took him 4 to 5 years to complete converting the house into a semi-detached, during which time he repaid the loan and also renovated the house with his own earnings. By the time the house was ready to be rented out there was only a small part of the loan which remained to be repaid. However he later admitted that in the beginning the semi-detached house was rented to the Ministry of Education, and the loan used to convert the existing house to a semi-detached house was repaid with the rental money.

[53] Mr Pillay denied that Ms Lablache is entitled to a share of the property on the basis that the parties had only been able to purchase it because she was a returning graduate; because the property was in both their names; and because the loan to purchase the property was repaid with rent paid by tenants sourced by her.

Titles H6465 and H6466 - subdivisions H1343 (Majoie)

[54] Mr Pillay testified that H6465 and H6466 were purchased by the parties from the Government for a consideration of SCR100,000/- as shown by Exhibit P5 - transfer deed dated 4th August 2005 and registered on 24th October 2011. One of the conditions of the transfer was that *“The transferees shall amalgamate the properties with Parcel H1345”*. H6465 is a subdivision of Title H1343 as shown by Exhibit P5(a) - Certificate of Official Search in respect of Title 6465 of an extent of 1,162 Sq. metres of which the proprietors are Mr Pillay and Ms Lablache. The same is confirmed by Exhibit P5(g) - Cadastral plan of Property No. H1343 of an extent of 1,268 Sq. metres, and Exhibit P5(h) - Cadastral plan of Property No. H6465 of an extent of 1,162 Sq. metres.

[55] Mr Pillay produced Exhibit P5(d) - a letter dated 6th May 2003 from Mr Pillay addressed to The Principal Secretary, Ministry of Land Use & Habitat applying to purchase H1343, Majoie from the Government. Exhibit P5(e) and Exhibit P5(f) are correspondence between the Ministry of Land Use & Habitat and the Ministry of Local Government regarding Mr Pillay’s application which culminated in the latter informing the former that the parcel could be allocated to Mr Pillay.

- [56] According to Mr Pillay, the purchase of the two plots was financed by a loan from the Mauritius Commercial Bank (Seychelles) Ltd. Exhibit P5(b) is a letter from Mr Pillay to the manager of the bank dated 14th September 2004 applying for a loan in the sum of SCR160,000 to clear an existing loan of SCR100,000 that he had borrowed from the bank and to take a further loan of SCR60,000 to purchase a new plot of land at Pointe Conan namely H1343 (subdivided to form H6465 and H6466). The total amount borrowed by Mr Pillay to purchase H6465 and H6466 was SCR100,000/- as shown by Exhibit P5(c) – an “AVIS D’OPERATION” issued by the bank dated 13th October 2004 addressed to Mr Pillay informing him that they had issued a bank cheque in favour of the Seychelles Government in the sum of SCR 100,000.
- [57] In cross-examination Mr Pillay confirmed that the properties are still in the joint names of the parties and are vacant. He stated that he had offered her his half share in these two parcels as a settlement together with SCR500,000.00 and the truck she is currently driving. He initially claimed to have purchased the truck but then stated that it had been paid for by both of them although he had contributed more. As to whether this offer was not on the low side considering the value of all the immovable properties subject matter of this claim, he replied in the negative.

Title V1332 (English River/ Castor Road)

- [58] Mr Pillay testified that Title V1332 is situated at English River/Castor Road and has a building comprising a basement and a ground floor, thereon. The basement is occupied partly by ACM & Associates (“ACM”) an accounting firm, and partly by Mr Pillay himself as his electrical workshop is located there. ACM also occupies part of the ground floor, the other part being occupied by RPM a dealer in auto accessories and spare parts. Mr Pillay stated that he is paid SCR70,000/- as rent for the building which he uses to repay the loan borrowed for the purchase of V1332 and the construction of the building thereon, and to finance the construction of the two apartments and bedsitters on parcel H1346 at Majoie.
- [59] Title V1332 was purchased by Mr Pillay from Octave and Jenny Tirant for a consideration of SCR300,000/- as shown by Exhibit P6 - transfer deed dated 22nd

February 2006 and registered on 20th March 2006. Mr Pillay denies that Ms Lablache approached one of her relatives for them to sell the property, and stated that they both did. He produced **Exhibit P6(f)** - a receipt dated 22/2/06 issued by Pardiwalla Twomey Lablache Law Chambers of a sum of SCR15,025.00/- from Mr Pillay being stamp duty on transfer of V1332. He states that the receipt is in his name because he is the one who made the payment.

[60] Mr Pillay testified that he borrowed a loan of SCR600,000.00 from the Mauritius Commercial Bank which was used partly to purchase Title V1332 and partly for construction of the building thereon which he repaid himself. He produced Exhibit P6(e) - a loan agreement dated 20th January 2006 between the Mauritius Commercial Bank (Seychelles) Limited and Mr Walter Patrick Pillay (“the Borrower”) and Mrs Paquerette Lablache Pillay (“the Co-Borrower”) signed by representatives of the bank and both parties. The agreement is for a loan in the sum of SCR600,000/- to be credited to the Borrower’s account number 00715817002 held with MCB Seychelles. The purpose of the loan is stated to be for the purchase of land and building, and the loan repayments to be repaid in 84 monthly instalments of SCR9,960.71 from 28th February 2006 until full repayment. Security for the loan as stated in the agreement are as follows:

- *1st Line Line Mortgage on property H1345 for sum of SCR200K (Reg date: 14/03/03 New*
- *Life Mortgage Protection Insurance for SCR600k*
- *2nd line mortgage on H1345 for SCR400K*
- *Assignment of rent*
- *Assignment of House Insurance Protection*

[61] Mr Pillay produced Exhibit P6(a) - a document issued by the Mauritius Commercial Bank (Seychelles) Ltd dated 23rd February 2006 addressed to Mr Pillay which reads as follows:

*“Nos Réf : 9913/AE/20/0002362 01
HA2 CREDITS HABITAT AMORT PARTICUL
Vos Réf : TO PURCHASE LAND AND BUILDING*

MISE A DISPOSITION

Montant à votre disposition .. 600.000,00 SCR

*Reglement par credit de votre compte 00715817002
du montant de *****600.000,00 SCR
En valeur : 23/02/06”*

- [62] He produced Exhibit P6(b) - another document issued by the Mauritius Commercial Bank (Seychelles) Ltd dated 23rd February 2006 addressed to him which states:

*“Nos Réf : 9913/AE/20/0002352 01
HA2 CREDITS HABITAT AMORT PARTICUL*

*AVIS d’ECHEANCE
COMMISSION TRAITEMENT DOSSIER CREDIT*

Echeance du 23/02/06

Montant au principal : 600.000,00 SCR

Periode du : 28/01/06 au 23/02/06

Taux : 0,750000000 TVA : 0,00

Montant porté au debit de votre compte: 4.500,00

En valeur : 23/02/06”

- [63] He also produced Exhibit P6(c) - a statement for a loan account held with MCB Seychelles in the name of Mr Pillay (*Emprunteur 7158170*) for a loan of SCR600,000.00 showing the loan repayments in monthly sums of SCR9,960.71 from 28/02/2006 to 28/01/2013 when the loan was repaid in full. Mr Pillay testified that the loan repayments were made by deduction from his MCB bank account into which his salary is paid and that Ms Lablache did not make the loan repayments or make any contributions towards them.

- [64] He produced Exhibit P6(g) - a receipt dated 24/10/07 issued by Government of Seychelles for a sum of SCR2,980.32 from Mr Pillay being Planning Fees which Mr Pillay claims is for the building on parcel V1332. He states that the receipt is in his name because he is the one who effected the payment.

- [65] Mr Pillay also produced Exhibit P6(h) a letter dated 1st June 2006, from the Ministry of Land Use and Habitat addressed to Mr Pillay, with reference to a planning application for

“NEW ROOF AT ENGLISH RIVER PARCEL V1332” informing him that the Planning Authority had made a final decision regarding the same and advising him to contact his agent for the signed documents/drawings.

[66] Title V1332 and the building thereon was transferred to the parties’ two children Kimberly Pillay and Iouanna Pillay with the usufructuary interest in favour of Mr Pillay, as shown by Exhibit P6(d) – Certificate of Official Search dated 22nd May 2017 in respect of Title V1332 of an area of 0.046 Acres. Mr Pillay reiterated that he transferred the property to the children because he did not want to see them thrown out on the streets after he dies. He understands that by retaining the usufructuary interest in the property he has enjoyment of the same until his death.

[67] He maintained that his wife did not contribute in any way towards the purchase of the property or construction of the building on V1332, and stated that in addition to the loan, it cost him about SCR1.3 million more to complete the construction which he paid for from his salary. He stated that construction of the building started 1 year after the purchase of V1332 in 2006, and went on for about 3 to 4 years, as the additional money for the construction came from his salary.

[68] At the time construction was ongoing on V1332 the parties were living with their 3 children at Majoie. Mr Pillay claims that he paid for the utilities (water & electricity) and they both looked after the children. At the time, Ms Lablache was working in her own textile business called Mangouya Studio which involves sewing and printing tee-shirts and the like, which she operated at Majoie in the studio on H1346. Because she was running the business she could not provide him with a 100% support on the home front while he went out to work in order to repay the loan and finance construction of the building from his earnings.

[69] After construction of the building on V1332 was completed, Ms Lablache started operating a shop called Mangouya in there, selling hats, bags, tee-shirts and the like, but she could not always pay the rent although she was supposed to pay SCR6,000/- or SCR8,000/- as rent. After 1 or 2 years she closed the shop and opened one at Barbarons which also closed after 1 or 2 years, after which she opened another one in Victoria at

SENPA which is still operational. Mr Pillay testified that Ms Lablache has never contributed to any of the family's expenses including the household expenses from her earnings from Mangouya, except for the children's school fees as previously explained.

[70] In cross-examination Mr Pillay stated that when he purchased V1332, there was an old house on it which he demolished and rebuilt with the loan of SCR600,000.00. He explained that Ms Lablache was a co-borrower for the loan as at the time he was self-employed whereas she was employed with the Ministry, and the bank required a guarantor to whom they could turn in case he defaulted on the loan repayments. However he conceded that in the loan agreement dated 20th January 2006 (Exhibit P6(e)) Mrs Lablache is stated to be a co-borrower and not a guarantor. He also agreed that the mortgage to secure the loan was on Title H1345 (with semi-detached house) which is co-owned by himself and Ms Lablache. It was therefore put to him that the loan was borrowed by both him and Mr Lablache to which he responded that he was the one who repaid the loan although it was in both their names.

[71] Mr Pillay stated that he knew about V1332 because he was born at English River. He denied knowing that Octave and Jenny Tirant from whom he purchased the property, are related to Ms Lablache. He also denied that Ms Lablache approached Mr Tirant for him to sell them the property so that she could run her business from that property, and when shown an affidavit by Mr Tirant to that effect (Exhibit D23) he stated that this is what Mr Tirant says but he does not know. He further denied that it was Ms Lablache who approached Mr Tirant as they were related, or that she negotiated the sale of the property, or that the property was supposed to be transferred in both their names but that he signed the transfer by himself which is how he obtained sole ownership of the property. As to whether Ms Lablache had any interest and share in the property, he stated that she did not repay any loan.

[72] Mr Pillay reiterated that after the building on V1332 was completed, he rented it out to RPM and ACM which he also occupies a part of. He insisted that he does not know for how many years he has been renting out the building although it has been for a while, but stated that he has been occupying an office for about 4 years now. He also did not recall

when the building was completed, but stated that it took a long time because the loan was not sufficient and he had to use his own money to complete it. It was put to him that he knew how long he had been renting out the building since he knew that he had been occupying the office for 4 years, but that he was concealing the same so that the Court would not know how much rent he had collected. He replied that he has been using the rent money to repay the loan on the building and to maintain it, but maintained that he does not remember how long he has been renting out the place because it has been a long time.

[73] Under further cross-examination he recalled that he rented space to Ms Lablache as soon as the building was ready although he could not remember in which year. At the time he did not rent out to other people, because the building was only partially completed. When Ms Lablache vacated the premises he rented it to RPM. At the time IOT was already occupying the premises but he could remember when IOT started renting, although he recalls that they did so for 2 to 3 years. After IOT moved out it was replaced by ACM and RPM carried on its occupancy.

[74] He reiterated that he is collecting SCR70,000.00 monthly as rent for the building which he is using to repay a loan with MCB, proof of which could be obtained from MCB. He also denied that all the loans on the property had been repaid and that there were none outstanding. It was put to him that if there were outstanding loans he would have been sure to produce proof thereof and he reiterated that he would obtain the necessary documents from MCB. It was further put to him that he has solely been benefitting from rental of the property for over 10 years and he stated that it is normal that he collects the revenue for his property. In further cross-examination Mr Pillay went on to admit that he had finished repaying the loan for purchasing the property and construction of the building, and that he is only using part of the rent to maintain the property and pockets the rest, stating that it is normal for him to pocket the money as it belongs to him.

[75] It was further put to him that Ms Lablache is not benefitting from the property in which she has an interest because she has helped in getting Mr Tirant to sell it, assisted him in obtaining the loan by being his co-borrower and allowed property co-owned by them

both to be used as security for the loan to build on the property. He denied that Ms Lablache had any interests in the property and stated that she had operated a shop in the building for which she could not even pay the rent whereas he struggled to construct the building and had repaid the loan. He denied that he had evicted her and stated that it was normal for her to move out if she could not pay the rent as he would have been unable to repay the loan with no rent coming in. Mr Pillay also denied that he was being unfair to Ms Lablache by transferring the building to the children.

[76] As to whether Ms Lablache was paid any of the rent received for the building, Mr Pillay stated that he repaid the loan she had borrowed to purchase a Hyundai car, by monthly instalments of SCR5,000.00. He made the repayments until the loan was paid off, but does not recall the amount of the loan or for how long he made the repayments. It was put to him that the vehicle belongs to Ms Lablache and he had brought no proof that he had repaid the loan, and he maintained that he had repaid the loan because she did not have money to do so. He was unable to say what Ms Lablache spent her money on for her not to be able to repay her loan, but maintained that she did not have any money to meet the loan repayments, to care for the home or invest in the properties acquired during their relationship, and this despite working as a teacher and running her own business. As to her contributions, he stated that after their divorce she paid maintenance for Inesh but stopped when he turned 18 although he was still going to school. Furthermore he paid for two years of Inesh's schooling at Independent School. He also stated that she had sought custody of Inesh which he had not opposed.

[77] In further cross-examination Mr Pillay stated that the car for which he had repaid the loan was an ix35 and the proof that he paid for the car is the SCR5,000.00 repayments that he made. He stated that they purchased the car with the proceeds of sale of an HRV which was registered in his name, the money from the loan and other money they put together, thereby accepting that Ms Lablache had partly invested in the vehicle. It was put to him that the vehicle was bought and paid for solely by Ms Lablache hence the reason why it was solely in her name, otherwise it would have in both their names, and furthermore Ms. Lablache claims that the SCR5,000.00 that he gave her for 9 months was her share of the

rental of the building on V1332 (para 23 of affidavit in support of her cross-petition) which he denied.

Encroachment on Titles V15988 & V15989

[78] Mr Pillay testified that the building on V1322 encroaches on V15988 and V15989 (subdivisions of parent parcel V4746). V15988 and V15989 are two small adjoining plots of land belonging to the Government, abutting the front of V1322 at English River. Mr Pillay produced Exhibit P9 - a Certificate of Partial Occupancy dated 16th November 2009 issued by the Planning Authority granting Mr Pillay permission “*to occupy and use only part of the development, described as Shop on the Land known as parcel V1332 and V15988 ... at English River*”. He also produced Cadastral plans for parcel V1332 (Exhibit P10) measuring 184 sq. metres, V15989 (Exhibit P11) measuring 45 sq. metres, V15988 (Exhibit P12) measuring 168 sq. metres, as well as a location plan of V1332 (Exhibit P12) showing the location of the three parcels in relation to each other. He stated that they abutted each other and were shaded on the location plan. I note that the 3 plots are not clearly defined on the location plan and it is not possible to see the encroachments on V15988 and V15989.

[79] Mr Pillay stated that he sought to buy V15988 from the Government but they only agreed to lease it to him. Exhibit P6(i) is a letter dated 14th November 2006 from the Ministry of Land Use and Habitat addressed to Mrs Paquerette Lablache-Pillay regarding “Purchasing of a slight portion of State Land” acknowledging receipt of her letter dated 7th November 2006 and informing her that her request was being attended to and that she would be informed of the outcome as soon as possible. Exhibit P8 is another letter dated 10th January 2007 from the Ministry of Land Use and Habitat addressed to Mrs Paquerette Lablache-Pillay on the subject “APPLICATION TO LEASE STATE LAND PARCEL V4746 – ENGLISH RIVER” referring to her letter dated 7th November 2006 and informing her that her request to lease parcel V4746 has been considered but that before proceeding to enter into a lease agreement with her V4746 had to be resurveyed to determine the extent of the encroachment thereon and that this would take some time.

[80] Exhibit P7 is the Lease Agreement between the Republic of Seychelles and Mr Pillay dated 18th January 2008 and registered on 20th February 2008 for the lease of V15988 (of an area of 168m²) for a term of 15 years commencing on 18th January 2008 in consideration of a premium of SCR4200/- and an annual rent of SCR4200/-. Exhibit P7(a) is a receipt issued by the Government of Seychelles on 22.3.2018 for a cash payment in the sum of SCR5,000/- received from Mr Pillay being arrears on parcels V15989 and V15988 Bel Air. Mr Pillay explained that the reference to “*Bel Air*” on the receipt is a mistake. He testified that he still holds the lease and pays the rent to the Ministry Habitat with cash which he obtains for the rent of the building on V1322. Only he pays for the lease and not Ms Lablache.

[81] In cross-examination he confirmed that the building on V1332 is partly built on V15988 which is adjacent to V1332, and which he leases from the Government for SCR4,200 annually. He stated that he is also leasing another plot of land abutting V1332 and that both leases amount to around SCR7000.00 annually. He explained that Exhibit P7(a) - a receipt for the lease of the two parcels is for the sum of SCR5000 because sometimes he only makes a part payment for the lease.

Title H2307 (Majoie) purchased from Mr. Francis Ally

[82] Mr Pillay testified that he purchased title H2307 from Mr Francis Ally for a consideration of SCR350,000/- by transfer deed dated 12th June 2012 and registered on 23rd July 2012, with Mr Ally being granted a usufructuary interest in the property for his lifetime (Exhibit P14). There is a house on the property where Mr Ally resides. Mr Pillay stated that he paid for the property over a period of 4 years out of his monthly salary which he earned from his business and that Ms Lablache did not contribute to the payments.

[83] He produced Exhibit P14(a) - a Certificate of Official Search dated 22nd May 2017 in respect of Title H2307 of an area of 550 Sq. metres showing the proprietor as Inesh Ethan Pillay (Minor) and Francis Ally having a usufructuary interest in the property. Mr Pillay claims that he transferred his bare-ownership to his son so that it will belong to him when Mr Ally dies as he believes that parents should help their children and he wants his children to have everything they need to survive. He denies having acted in bad faith in

transferring the property to Inesh to defeat Ms Lablache's claim and cheat her out of the properties which the parties own. Mr Pillay also produced Exhibit P14(b) - Cadastral plan for parcel H2307 measuring 550 sq. metres.

[84] In cross-examination, Mr Pillay accepted that all the properties subject matter of this case, with the exception of H1346 on which the matrimonial home stands, were in his sole name or the joint names of the parties and were acquired during the time of their cohabitation and/or marriage. It was therefore put to him that Ms Lablache had contributed to all these properties and had a share in them including the matrimonial home which he denied.

Titles V9192 & V9193 purchased from Mr Pillay's father

[85] Mr Pillay produced Exhibits P15 and P16 - Certificates of Official Search dated 26th June 2019 in respect of Title V9192 of an area of 842 Sq. metres and Title V9193 of an area of 248 Sq. metres respectively, showing Walter Patrick Pillay as the proprietor with Georges Herbert Pillay holding usufructuary interests in the two parcels. He testified that there is one house on each parcel, one of which is occupied by his father who rents out the other one. Mr Pillay testified that his father transferred the bare-ownership in the two parcels to him but he does not recall when, or even if it was during the time he was married. He testified that he did not pay his father any consideration for the two parcels but only paid the notarial fees for the transfer. Furthermore since Ms Lablache did not pay any money for the two parcels either, and his father has never indicated that she had any share in the properties Mr Pillay stated that he does not believe that she is entitled to a share in either property. However in cross-examination Mr Pillay admitted that he did in fact pay a consideration of SCR150,000.00 for the properties.

[86] Mr Pillay was cross-examined as to why in his petition and supporting affidavit, he had requested only to be declared the sole owner and to have sole occupation of parcels H1343 and H1345, without disclosing the other properties referred to in Ms Lablache's counter-petition. He replied that this was because or because he had transferred them to his children, and that it was his wish for the properties that belonged solely to him to belong to his children. He stated that he did not mention Titles V9192 and V9193 in his

petition because he had purchased the bare-ownership of these two parcels from his father and still considers them as his father's property. It was further put to him that it was unfair on his part to come before the Court to seek sole ownership of the only two properties co-owned by him and Ms Lablache, after dissipating all the properties in his sole ownership from the matrimonial pool. He replied that when he purchased H1343 and H1345, he expected the marriage to last and did not expect that the parties would divorce one day. He transferred the property to the children because of what happened between the children and their mother, leaving the other two properties in his name. It was further put to him that except for Titles V9192 and V9193, he had dissipated all the properties that was in his sole name and taken them out of the matrimonial pool to try and defeat any claims that Ms Lablache might have against him. He denied this stating he could have sold the properties instead of giving them to the children. He further denied that he would not have done so, as in transferring only the bare-ownership of the properties to his children and retaining the usufructuary interest he still has control over and benefits from the land.

[87] It was further put to him that it is unfair and unreasonable for him to still be benefiting from the properties which he fraudulently transferred to his children while keeping the usufructuary interest to deprive Ms Lablache of her share in the matrimonial property, and in addition to to be asking the Court to condone that the only two properties which he and Ms Lablache own jointly is transferred in his sole name, given that they have lived together for 36 years, have 3 children and that Ms Lablache has contributed to all the properties and businesses. Mr Pillay responded that he is asking for sole ownership of these two properties because Ms Lablache lives next to him and is continuously making complaints about him to the authorities including the police, the Public Health Authority, the Environment Department and he is fed up of the police coming to his place for things he has not done.

[88] As to why, in that case, he doesn't just compensate her justly instead of trying to defraud her out of her share in in the property, he stated that she has been compensated by all he has given her over the years. Furthermore for all those years that they have been together,

she has lived in a house and also used the studio without paying anything. Furthermore the children were maintained mostly by him.

[89] It was put to Mr Pillay that his acts of dissipating the assets, his testimony that Ms Lablache has nothing despite having worked throughout their marriage and cohabitation, shows that he does not want her to have anything to which he replied that he was the one who did and financed everything. It was further put to him that no reasonable Court would believe that somebody who works has not contributed to the family and to the acquisition of assets and he replied that he has acknowledged her contributions but denies what she has not contributed. He denied that she is entitled to a half share in all the properties solely owned by him namely H1343, H1345, H2307, V1332, H6638, V9192, with the exception of title H1346 excluding the matrimonial house thereon.

[90] He also denied that she has a half share in the matrimonial home on the basis that she has contributed to furnishing, maintaining and renovating the house. He also denied that she spent part of the SCR147,000 which she obtained as terminal dues from the Ministry of Education on the matrimonial home and claims that she spent it on her business. He was asked whether he was then admitting that she spent it on setting up her business, he replied that it could be. When asked if therefore she did not need him to assist her in her business, he replied that he didn't know and that she needed him before when she had nothing. As for Mrs Lablache's labour, time and energy spent on the matrimonial home, to furnish it and do what needed to be done, he stated that she did not spend any of her money on the house. He also claimed not to know whether she spent her money on her business stating that she was in a better position to know that. It was put to him that he had admitted that she had borrowed two loans of SCR80,000 for her business, that furthermore she had spent part of her compensation on the business and that she had taken a loan for expansion of the studio. He denied the latter.

[91] He also denied any knowledge of whether besides her half shares in H1343 and H1345, Ms Lablache has any other properties, and stated that he knows her family owns land but does not know if she does.

[92] As for it not being easy for Ms Lablache to start anew given that she is 59 years old, Mr Pillay stated that she chose for it to be like that. It was put to him that it is heartless after 36 years together, for her to walk out with nothing and for him to deprive her of even the half share in H1343 and H1345 and he replied that he contributed everything for the properties. It was put to him that his demeanour and evidence shows that he wants Ms Lablache to walk off without a cent or property to her name and to start over at 59 with nothing. He replied that he had offered her land and money which she refused.

H6638

[93] Mr Pillay did not testify in respect of H6638.

[94] In addition to his testimony in regards to the properties, Mr Pillay also testified about his contributions to Ms Lablache's businesses. He stated that when Ms Lablache started her business Mangouya Fashion Studio in February 2008, he assisted her by giving around SCR100,000/- which he gave her in small amounts ranging from 18,000/- to SCR25,000/- every now and then. She used the money to purchase goods to start the business. He further testified that Ms Lablache operated her textile business from the studio located on H1346 rent-free.

[95] Mr Pillay stated that Ms Lablache also owned a business Mangouya Fashion Show which is a modelling agency. She had employees and in addition had 4 or 5 girls and 3 boys as models. She made the clothing and the models modelled them at hotels. They used her car as well as his to transport the models. She invested in textiles, clothes, hats and equipment needed to run the business which was administered from his house.

[96] Mr Pillay further testified that Ms Lablache has owned several vehicles the first of which was a Toyota Corolla, followed by a Honda, a Hyundai jeep and lastly an Isuzu pick-up. He stated that the parties sold their Honda and with the proceeds and a loan borrowed by Ms Lablache from MCB purchased the Hyundai which cost SCR400,000/- although he does not recall the amount of the loan. He claims that he repaid the loan and gave their daughter Iouanna SCR5,000/- every month to put in her mother's account for that purpose and denied that he only paid that sum for 9 months. He claims that the

SCR5000/- was taken from the rental obtained from the building on Title V1332 at Castor Road.

Testimony of Dereck Accouche

[97] Dereck Accouche has been a quantity surveyor (“QS”) since 2015 and works with AQS Consultancy, Consulting Quantity Surveyors. He holds a Bachelor of Science in Construction Economics and a Bachelor of Science (Hons) in Quantity Surveying from the Nelson Mandela Metropolitan University. This is the first time that he depones as an expert witness in Court. He testified that he received instructions from Mr Anthony Derjacque’s Chambers to prepare a valuation of 6 properties with a view to determining their current market value following which he visited and drafted valuation reports for each property. The valuation method for the land comprised in these properties is based on the current market rate at the time of valuation. The depreciation approach was used for valuation of the structures.

[98] Mr Accouche explained that the land is valued at a square metre rate. For example the English River property (V1332) which is on the outskirts of the town and registered as Commercial and Residential property on the Land Use Plan will have a higher square metre rate compared to the residential properties at Majoie. Valuable factors are then added to and devaluable factors subtracted from the initial assessment of the value of the property based on the square metre rate to find the final value of the property. Mr Accouche further explained that in Seychelles there is no authority or body that establishes or gives guidance for calculating the square meter rate for a given area. The square metre rate for land is dictated by the banks because they give loans for the purchase of land, and will only approve loans where the purchase price is based on a square metre rate which permits the property to be sold within two to three years, to recover the amount of the loan in the event that a client defaults on loan repayments. If the square metre rate he provides to the bank is not a realistic one which will allow the sale during that time frame the banks will not accept his valuation. His assessment of the square metre rate of land in the present case is based on his own database which he has compiled over four years from valuations that he has done for banks. He estimates that he

has done 80 to 100 such valuations per year over these four years which have been accepted by the banks.

[99] A depreciating approach is adopted for the valuation of structures/buildings for residential purposes. The current value of the building (i.e. how much it would cost to construct it at the time of valuation) is depreciated over the number of years since it was built. For example if a building which was built in 1990 is valued in 2000, the construction cost of the building in 2000 is assessed and depreciation applied to that cost from 1990 to 2000. If the building has deteriorated additional costs for renovations are factored in. The current value of the building (at the time of valuation) is calculated as follows: Where there are detailed plans of the building, a cost estimate is made of the elements of the building (the substructure, superstructure, roof etc.) based on the elemental square metre rate as per the database compiled by Mr Accouche for banks. Where there are no detailed plans a calculation is done of how much the different elements of the building will cost, from which an elemental rate (i.e. a square metre rate for each element) is obtained which is applied to obtain the total cost estimate.

[100] In further examination in chief, (proceedings of 19th July 2021) Mr Accouche stated that factors that will be taken into account when carrying out valuation of a property are the characteristics of the property, as well as whether there are any buildings and retaining walls on and improvements to the property, and their state and lifespan. In addition to what he had previously stated in regards to the valuation of structures/buildings, he stated that the starting point is to ascertain the replacement cost of the structure/building (i.e. how much it would cost an insurance company to replace the building/structure at the date of valuation). This is done by calculating the size of the structure, ascertaining any improvements made to it and for instance the number and type of windows, and putting a value to them which will be the replacement value. The next step is to find out the total renovation costs (if the building needs any renovation), and after that, the lifespan of the building. According to the method used by Mr Accouche when a building reaches 75 years from the time it was built it no longer has any value. He will therefore ascertain the time that has elapsed since the structure was built in order to calculate the depreciation of the structure on the assumption that it has 0 value after 75 years. He therefore calculates

the value of the building by deducting depreciation which has been calculated on the basis of the lifespan of the building (i.e.how many years are left) at the time of valuation.Mr Accouche stated that he was comfortable with his analysis and conclusions as stated in the different valuation reports. He produced seven reports (Exhibits 17, 18, 19, 20, 21, 22 & 23) for the valuation of properties stated below at (a) to (g) below.

(a) Exhibit P17 – Parcel H6638 (Bare land) at Majoie, Anse Etoile

[101] Exhibit P17 comprises (1) a covering letter; (2) a summary of information relating to the property including its owners, location and brief description, as well as its certified value; (3) a detailed valuation of the property including base value, valuable correction factors, devaluable correction factors and the total value of the land; (4) an orthophoto of the property; (5) title deeds of the property; and (6) cadastral map of H6638. The relevant parts of the summary of information reads as follows:

Date of Inspection: 4th February 2019

Date of Valuation: 27th February 2019

[...]

Owners (Current) of the property:

1. Kimberly Sasha Rebecca PILL-AY (NIN: 995-0155-1-0-83)
2. Inesh Ethan PILLAY (NIN:002-0041-1-1-91)

[...]

Brief property description:

- Land: Subject property **Parcel No. H6638** is located at Ma Joie, Anse Etoile, Mahe, Seychelles. The property is located approximately 440 meters from Anse Etoile coastal main road, which is approximately a two-minutes' drive, however, the property does not have any motorable access road. Adjacent to the property there is a road reserve (Parcel No. H6131), where it will be straightforward to build a motorable access road, subject to government permission/approval. The property is an overgrown virgin parcel. The total area of the properties is **161.00 square metres**. The property is categorized under R5 Medium Density Residential land use plan, thus can only developed 35% of land coverage, which equates to 56.35 square meters. The property is located in a relatively low-developed and tranquil area with low levels of illicit activities.

*After the detail (sic) and careful study of all the relevant documents provided by my client, along with the examination of ownership papers, cadastral map, and inspection of site followed by the detail (sic) measurement of the site and considering prevailing norms: The Certified Value of the above-mentioned property on the 27th February 2018, is **Seychelles Rupees (SCR) 130,088.00.***

(b) Exhibit P18 - Parcel H2307 (Land & Building) at Majoie, Anse Etoile

[102] Mr Accouche testified that parcel H2307 is adjacent to parcel H6638. Exhibit P18 comprises (1) a covering letter; (2) a summary of information relating to H2307 including its owners, location and brief description, as well as its certified value; (3) an evaluation worksheet containing a detailed valuation of the land (including base value, valuable correction factors, devaluable correction factors and the total value of the land) and the structures thereon (namely the value of the house comprising 2 bedrooms and 1 bathroom from which the depreciation of such structure is deducted); (4) pictures of the property from different angles; (5) an orthophoto of the property; (6) cadastral map of H2307; (7) a Certificate of Official Search dated 22nd May 2017 in respect of Title H2307 and (8) transfer of H2307 dated 12th June 2012 from Mr Francis Ally to to Walter Patrick Pillay. The relevant parts of the summary of information reads as follows:

Date of Inspection: 4th February 2019

Date of Valuation: 27th February 2019

[...]

Owner (Current) of the Property

Inesh Ethan PILLAY (NIN: 002-0041-1-1-91)

[...]

Brief property description:

- Land: Subject property Parcel No. H2307 is located at Ma Joie, Anse Etoile. Mahe, Seychelles. The land accommodates a shabby 2-bedroom house. The property is located approximately 460 meters from Anse Etoile coastal main road which is approximately a two-minutes' drive. The property has motorable access road plus parking space for one car only. The property looked neglected. The total area of the properties is 550.00 square meters. The property is categorized

under the R5 Medium Density Residential land use plan and, is located in a relatively low-developed and tranquil area with low levels of illicit activities.

- Structures

- o House: *The total construction floor area of the building is approximately 94m². The house has only one level comprising of a kitchen, living room and dining room, 1 bathroom, 2 bedrooms & veranda.*

The building is constructed out of reinforced concrete structures, concrete masonry blockwork. cement mortar render and plaster finished, PVA exterior quality paint on the external facades, interior quality PVA painted internal walls, 4mm thick painted masonite ceilings, S-Profiled corrugated iron sheet roof covering, flushed internal timber doors, timber glazed casement windows & solid timber doors at external openings, ceramic tiling works on the floor areas.

The building was built in the early 1980s and some apparent structural defects were identified upon site visit. The whole house requires major renovation works, such as repainting of the internal and external walls & ceilings, replacement of all sanitary-ware appliances, fittings and accessories, renovation of all the solid timber doors, replacement of all internal flushed doors, re-roofing and insulation (sisalation-foil)of the whole house, replacement of the kitchen cabinets & worktops, new rainwater drainage system, removal of algae to all external areas; however, consideration has been taken for such works (Note: in addition to the life span depreciation of the identified structures) under the depreciation section of the evaluation worksheet.

After the detail (sic) and careful study of all the relevant documents provided by my client, along with the examination of ownership papers, cadastral map, and inspection of site followed by the detail (sic) measurement of site and considering prevailing norms; The Certified Value of the above-mentioned property on the 27th February 2018 is Seychelles rupees (SCR) 410,233.97.

... this valuation excludes all loose/movable furniture, appliances and equipment.

(c) Exhibit P19 - Parcels H6465 & H6466 (Bare land) at Majoie, Anse Etoile

[103] Exhibit P19 comprises (1) a covering letter; (2) a summary of information relating to the property including its owners, location and brief description, as well as its certified value; (3) an evaluation worksheet containing a detailed valuation of the two land parcels (including base value, valuable correction factors, devaluable correction factors and the total value of each parcel); (4) an orthophoto of both parcels; (5) pictures of H6466; (6) cadastral map of both parcels; and (7) transfer of H6465 & H6466 dated 4th August 2005 from the Republic to Walter Patrick Pillay and Paquerette Lablache-Pillay. The relevant parts of the summary of information reads as follows:

Date of Inspection: 4th February 2019

Date of valuation: 27th February 2019

[...]

Owner (Current) of the property:

1. Walter Patrick PILLAY (NIN 961-0634-1-1-21)
2. Lusita Paquerette LABLACHE (NIN 961-0019-4-0-48)

[...]

Brief Property Description:

- *Land: Subject property Parcel No. H6465 & H6466 is located at Ma Joie, Anse Etoile, Mahe, Seychelles. The property is located approximately 550 meters from Anse Etoile coastal main road, which is approximately a two minutes' drive, however, the two properties does not have any motorable access road and while considering the topography and rock features on parcels H1345 and H6466, it will be costly to build a motorable access. The properties are overgrown virgin parcels. The total area of the properties is 1,269.00 square meters. The property is categorized under R5 medium-density residential land use plan, thus can only develop 35% of land coverage. The property is located in a relatively low-developed and tranquil area with low levels of illicit activities.*

After the detail (sic) and careful study of all the relevant documents provided by my client, along with the examination of ownership papers, cadastral map, and inspection of site followed by the detail (sic) measurement of site and considering prevailing norms; The Certified Value of the above-mentioned property on the 27th February 2018 is Seychelles rupees (SCR) 564,518.00.

[104] Mr Accouche testified that parcels H6465 & H6466 which are adjacent to each other, are about three metres higher than parcels H2307 and H6638. He also explained that there is

currently no road access to the two properties, but that the cadastral plan shows a road reserve. The difficulty with the road reserve is that it which goes over a “glacis”, and it would require quite an investment to access it, which reduces the value of the properties. The topography the properties, part of which is sloping also devalues them.

(d) Exhibit P20 - Parcel H1345 (Land & Building) at Majoie, Anse Etoile

[105] Exhibit P20 comprises (1) a covering letter; (2) a summary of information relating to the property including its owners, location and brief description, as well as its certified value; (3) an evaluation worksheet containing a detailed valuation of the land (including base value, valuable correction factors, devaluable correction factors and the total value of the land) and the structures thereon (including the value of the apartment building comprising 2 ground floor units and a partially completed 1st floor and stone retaining walls from which the depreciation of the structures is deducted); (4) pictures of the property from different angles; (5) an orthophoto of the property; (6) cadastral map of H1345; and (7) transfer of H1345 dated 24th January 2003 from the Republic to Walter Patrick Pillay and Paquerette Lablache. The relevant parts of the summary of information reads as follows:

Date of Inspection: 4th February 2019

Date of Valuation: 27th February 2019

[...]

Owner Current of the property:

1. Walter Patrick PILLAY (MN: 961-06341-1-21
2. Lusita Paquerette LABLACHE NIN 961-0019-4-048

[...]

Brief property description:

- Land: Subject property Parcel No. H1345 is located at Ma Joie, Anse Etoile, Mahe, Seychelles. The land accommodates a partially completed apartment building, comprising of 2 completed units of the ground floor level and an incomplete first-floor level designed to replicate the ground floor units. The property is located approximately 550 meters from Anse Etoile coastal main road which is approximately a two-minutes’ drive. The property has a motorable access road plus parking, however it is located at a lower level compared to the apartment level. Access to the apartments is through a staircase coming off the

parking level up to the garden area. The total area of the property is 737.00 square meters. The property is categorized under the R5 Medium Density Residential land use plan. The property is located in a relatively low-developed and tranquil area with low levels of illicit activities.

- Structures:

- o Apartment Building: The total construction floor area of the building is approximately 328m². The apartment building is partially completed with two-floor levels (Ground & First floor level). The completed ground floor level comprises of two no. units; each unit comprising of a kitchen, living room, one bathroom, two bedrooms & verandah.

The building is constructed out of reinforced concrete structures. concrete masonry blockwork, cement mortar render, PVA exterior quality paint on the external facades, interior quality PVA painted internal walls, 6mm thick painted plywood ceilings, zinc-alume roof covering, solid internal timber doors. aluminum sliding windows and sliding doors & solid timber doors at external openings, fixed painted galvanized burglar bars to window openings, ceramic tiling works on the floor areas.

The remaining works include; completion of the first-floor flooring, Cement plaster render to all first-floor walls and concrete frames, including associated paint finish and internal wall tiles to first-floor wet areas; Floor screed and tile finishes to all floors, including skirting; plywood ceiling boards and timber brandering, including cornices and paint finish to ceiling; all first floor internal and external doors windows to be completed: Eaves ceiling soffits and fascia & barge boards to roof and rainwater goods installation; All fittings — built-in cupboards & kitchen cabinetry etc. electrical works, and plumbing and drainage works; Externally, only soil drainage needs to be done — this includes manholes & soak away for the first-floor units.

The building was built in the late 2000's and no apparent structural defects were identified upon site visit. Some areas on the ground floor unit will require minor renovation works, such as repainting of internal and external walls & ceilings, ablution areas, renovation of timber doors and, external burglar bars; however, consideration has been taken for such works (Note: in addition to the life span depreciation of the identified structures) under the depreciation section of the evaluation worksheet.

After the detail (sic) and careful study of all the relevant documents provided by my client, along with the examination of ownership papers, cadastral map, inspection of the site followed by the detail (sic) measurement of the site and considering prevailing norms; The Certified Value Of the above-mentioned property on the 27th February 2018 is Seychelles Rupees (SCR) 3,367,080.68

[106] Mr Accouche testified that parcel H1345 is adjacent to parcels H6465 & H6466 and is more desirable than parcels H6638, H2307, H6465 and H6466 as it has an ocean view. He pointed out however that there is no direct road access to the property and any vehicles have to be parked at a lower level and the property accessed by steps. He stated that the structure on the property required only a few renovation works but “*nothing major*”, and that a stone retaining wall added value to the property.

(e) Exhibit P21 - Parcel H1346 (Land & Building) at Majoie, Anse Etoile

[107] Exhibit P21 comprises (1) a covering letter; (2) a summary of information relating to the property including its owners, location and brief description, as well as its certified value; (3) an evaluation worksheet containing a detailed valuation of the land (including base value, valuable correction factors, devaluable correction factors and the total value of the land) and the structures thereon (including the value of the main house comprising 3 levels, stone retaining walls, reinforced concrete pavings, from which the depreciation of structures is deducted); (4) an orthophoto of the property; (5) pictures of the property from different angles; (6) cadastral map of H1346; and (7) title deeds;. The relevant parts of the summary of information reads as follows:

Date of Inspection: 4th February 2019

Date of Valuation: 27th February 2019

[...]

Owner (Current) of the property:

- 1. Kimberly Sasha Rebecca PILLAY (MN: 995-0155-1-0-83)*
- 2. Inesh Ethan PILLAY (NIN:002-0041-1-1-91)*

[...]

Brief property description:

- Land: Subject property Parcel No. H1346 is located at Ma Joie, Anse Etoile, Mahe, Seychelles. The land accommodates an encroached house, which*

comprises of three levels; namely lower ground floor, ground floor and first-floor level. The property is located approximately 550 meters from Anse Etoile coastal main road which is approximately a two-minutes' drive. The property has a shared motorable access road (from parcel H1345) plus parking space to the rear of the property. The property uses the right of way of property H1345. The total area of the properties (sic) is 600.00 square meters. The property is categorized under R5 Medium Density Residential land use plan. The property is located in a relatively low-developed and tranquil area with low levels of illicit activities. The main house and retaining walls partially encroaches on the government land parcel no. H10786.

- **Structures**

- o Main house: *the total construction floor area of the building is approximately 393m². The house comprises of three levels; Lower ground floor, Ground floor and First floor level.*

On the lower ground level, there is an open living and dining area, covered veranda, and patio area. On the ground floor level, there is a kitchen, 1 bathroom, and 2 bedrooms: while. on the first-floor level, there are 2 en-suite bedrooms. 2 bedrooms with connecting bathroom 2 verandas.

The building is constructed out of reinforced concrete structures, and concrete masonry blockwork. cement mortar render, PVA exterior quality paint on the external facades, interior quality PVA painted internal walls, 6mm thick painted plywood ceilings, s-profiled corrugated galvanized iron roof covering, solid internal timber doors, aluminium sliding windows and sliding doors & solid timber doors at external openings, fixed painted galvanized burglar bars to window openings, ceramic tiling works on the floor areas.

The building was built in the late 1980s and no apparent structural defects were identified upon site visit. However, the whole house requires major renovation works such as repainting of internal and external walls & ceilings, ablution areas, renovation of timber doors, re-roofing and insulation (sisalation foils) of the whole house, renovation to the kitchen cabinets & worktop, new roof vents and rainwater drainage system, removal of algae to all external areas; however, consideration has been taken for such works (Note: in addition to the life span depreciation of the identified structures) under the depreciation section of the evaluation worksheet.

After the detail (sic) and careful study of all the relevant documents provided by my client, along with the examination of ownership papers, cadastral map, and inspection of site followed by the detail (sic) measurement of the site and considering prevailing norms: The Certified Value of the above-mentioned property on the 27th February 2018 is Seychelles rupees (SCR) 3,618,047.86.

... this valuation excludes: 1. all loose/movable furniture, appliances and equipment. Furthermore, 2. Any structures that does not have any connection/linkage with property parcel no. H1346.

[108] Mr Accouche pointed out that H1346 was adjacent to parcel H1345. Furthermore there was another structure attached to the main structure on H1346 and that part of that other structure encroached onto parcel H10786, but the valuation did not take the encroachment into account, which was valued separately.

(f) Exhibit P22 – Encroached Improvements on Parcel H10786 at English River

[109] Exhibit P22 comprises (1) a summary of information relating to the property including its owner, location and brief description, as well as its certified value; (2) Appendix A1 containing a detailed valuation of the structures on Parcel H10786; (3) pictures of the property; and different elevations of the structure. The relevant parts of the summary of information reads as follows:

Date of Inspection: 5th November 2020

Date of Valuation: 1st December 2020

In accordance with the instruction ... to evaluate the value of the encroached improvements undertaken on parcel H10786 from property H1346, which includes a partially completed residential development consisting of 4 levels with existing stone and concrete retaining walls; I hereby attest in my professional opinion that;

- 1. The value of the partially completed encroached residential development inclusive of all existing retaining walls is estimated at Seychelles Rupees (SCR) 2,279,362.00.*

Appendix A1 below provides a comprehensive breakdown of the overall value of the encroached improvements; however, it's important to note, at time of this exercise the

proprietor of parcel H10786 was Mr Walter Patrick Pillay who recently purchased on the 31st of March 2020, from prior owner Mr Simon Daniel Laramé.

As stated above, at date of site visit, the residential development was partially completed; with the followings remaining works pending; but not limited to;

- a) Completion of roof structure and coverings
- b) Completion of eaves soffits and rainwater goods
- c) Plastering works and paintworks to balance external walls and all internal walls
- d) Laying of Cement floor screed and floor tiling works to all new areas
- e) Fixing of wall tiles in bathroom areas
- f) Fixing of ceiling timber bracker and soffit boards
- g) Paintwork to ceiling soffits
- h) Fixing of skirtings and cornices
- i) All aluminium works; Installation of aluminium sliding windows and sliding doors to new areas
- j) Completion of all metalworks (i.e. balustrades etc...)
- k) All joinery works; fixing of doors and kitchen cabinets; inclusive of granite worktops
- l) Completion of RCC staircase finishing's
- m) Completion of all electrical installation works
- n) Completion of all sanitary, plumbing and drainage works
- o) Completion of all external foul/soil water drainage: inclusive underground uPVC drainage pipe systems, masonry manholes, bottle traps, septic tanks and soakaways.
- p) Ground levelling where required
- q) construction of external staircase serving upper level units (new build)
- r) completion of soil/foul water drainage
- s) Connection of permanent utilities supply.

Note, this valuation excludes depreciation on the old initial encroached structure, and excludes devaluation of the degraded roof coverings, which has started to compromise the roof structure of the upper level units.

... this valuation excludes all loose/movable furniture, appliances and equipment.

[110] Mr Accouche confirmed that this valuation was solely for the encroachments on H10786. He also observed that part of the structure on that property was not being used and required renovation.

(g) Exhibit P23 - Parcel V1332 (Land & Building) at English River

[111] Exhibit P23 comprises (1) a covering letter; (2) a summary of information relating to the property including its owner, location and brief description, as well as its certified value; (3) an evaluation worksheet containing a detailed valuation of the land (including base value, valuable correction factors, devaluable correction factors and the total value of the land) and the structure thereon (including the value of the commercial 2 storey building from which depreciation of building is deducted); (4) some general notes in regards to, and costs of the structure; (5) pictures of the property; (6) an orthophoto of the property; (7) cadastral map of V1332; and (8) transfer of V1332 dated 22nd February 2006 from Octave Tirant and Jenny Tirant to Walter Pillay. The relevant parts of the summary of information reads as follows:

Date of Inspection: 4th February 2019

Date of Valuation: 27th February 2019

[...]

Owner (Current) of the property:

1. Walter Patrick PILLAY (MN: 961-06341-1-21

[...]

Brief property description:

- Land: Subject property Parcel No. V1332 is located at English River, Mahe, Seychelles. The property is located adjacent to the main road from Victoria town and has parking space for around 6-8 cars on the upper level (adjacent to the Castor Road). The land accommodates a commercial building that is being leased two (sic) tenants. However, the building has been built on four different parcels, three of which belongs to the same owner, namely V1332 (Freehold), V15988 (Leasehold), & V15989 (Leasehold). While the other unregistered parcel belongs to the Government of Seychelles. The building encroaches onto the unregistered parcel by approximately 45 square meters on Plan.

The property is categorized under the C3 Commercial & Residences land use plan. Currently on the property, a total of 158 square meters of coverage (On Plan) has been utilized, amounting to 94 % land use coverage. The total area of the property is 184.00 square metres, thus not will not attract any prospective buyers on its own due to its size. And the only way for this land parcel to retain its

value on the open market and attract prospective buyers, the current proprietor will need to sell V1332 alongside the two other government leased land parcels (V15988 V15989).

- Structures:

Commercial Building: The total construction floor area of the building is approximately 460m²; comprising of two storeys (Lower ground floor and Upper ground floor). The current layout of the building can allow for three tenants. One tenant on the lower ground floor, one on the upper ground floor, and the other having access to both floor levels. The building is constructed out of RCC retaining walls at lower ground floor level, reinforced concrete structures, concrete masonry blockwork, cement mortar render & plaster, PVA exterior quality paint on the external facades, interior quality PVA painted internal walls, 6mm thick painted plywood ceilings, zinc-alume roof covering, solid internal timber doors, aluminum sliding & casement windows and hinged doors & solid timber doors at external openings, galvanized roller shutter for security on the upper level and fixed painted galvanized burglar bars to specific window openings, and ceramic tiling works on the floor areas. (Note: appended to this document are details of assumptions made during the evaluation exercise).

The building was built in the late 2000's and no apparent structural defects were identified upon site visit. Some areas will require minor renovation works, such as roof eaves, fascia & bargeboards, rainwater goods, walls, ceilings, ablution areas, renovations of doors; however, consideration has been taken for such works (Note: in addition to the life span depreciation of the identified structures) under the depreciation section of the evaluation worksheet.

After the detail (sic) and careful study of all the relevant documents provided by my client, along with the examination of ownership papers, cadastral map, and inspection of the site followed by the detail (sic) measurement of site and considering prevailing norms; The Certified Value of the abovementioned property on the 27th February 2019 is Seychelles Rupees (SCR) 4,866,247.77.

Please note that this valuation excludes all loose/movable furniture. Appliances and equipment.

- [112] Mr Accouche stated that the issue with V1332 is that the structure is built on four properties, only one of which belongs to Mr Pillay, and thus it will be difficult to sell V1332 without the other parcels. He also explained that he made a valuation of the whole structure as it was difficult to make separate valuations for the different parts of the structure standing on the different plots. He explained that this was unlike the building on H1346 which encroached on H10786, where it had been possible to make separate valuations because there were two separate structures on each parcel which were connected by a staircase.
- [113] He stated that it was normal for there to be variations in expert valuation reports drawn up by different QS as the valuations were based on their opinions and there was no specific science by which the value of property could be calculated. Different people have different valuation methods and use different ways to analyse or appraise property.
- [114] In cross-examination Mr Accouche agreed that he had not done any valuations of parcels V9192 and V9193 because he was not given any instructions in that regard. He stated that he was accompanied by Iouanna when he visited all the properties except for H10786 where Mr Pillay himself had been present at the site. Their only input had been with regards to basic information such as who was occupying the properties.
- [115] In regards to H6638 (Exhibit P17) he agreed that the property does not have a motorable access road but stated that there is a road reserve on an adjacent parcel H6131, and stated that as anyone who wants to buy it will have to invest more capital to build a road which reduces its value on the market. He also agreed that given the requirement that a plot must be at least 400 m² for it to be built on, the fact that the property was a mere 161 m² would also make it difficult to obtain planning permission to build on it. However special permission could be obtained for the same given that the parcel had been recognised as a parcel by the Ministry responsible for lands itself. He further stated that he knows of one case where this was done in respect of land measuring 200 m². Mr Accouche could not account for the difference between his valuation of SCR130,088.00 and that of Mr Nigel Stanley Valentin, of SCR 102,557.

[116] As for H2307 (Exhibit P18), he explained that there are two main factors that devalued the property: the first is the interest on the property in favour of Mr Francis Ally. He explained that a buyer is more likely to buy land which is free from encumbrances as opposed to one burdened with an interest in favour of another person, so that the usufructuary interest in favour of Mr Ally devalued the land. The second factor is the house on H2307 which was built in the 1980s and although it has quite a bit of life span remaining, has structural damage on one side. The house has to be devalued to take into account works to restore its structural integrity as well as renovation works for floor tiles, doors ceilings, the roof, kitchen cabinets and even electrical installations. In spite of the structural damage and need for renovation he admitted that the house was habitable and confirmed that Mr Ally was occupying it. Not having seen Mr Nigel Stanley Valentin's valuation report of the property in the sum of SCR1,042,213.00, Mr Accouche refrained from commenting on the difference between his valuation of SCR419,233.97 and that of Mr Valentin, stating that he did not know if Mr Valentin has taken into account the same things as he has in his valuation.

[117] In regards to H6465 & H6466 (Exhibit P19), Mr Accouche stated that it would be difficult to obtain planning permission to build solely on H6466 which is a 107 m² and that special permission would be required for the same. However he stated that application can be made to build a structure partly on H6465 measuring 1,162 m² and partly on H6466. He also agreed that the view from the bigger part of the two properties would not be a nice one as it is located in a valley, although there could be a good view from the upper part if it was cleared. Again he stated that not having had sight of Mr Valentin's valuation of the two properties amounting to SCR709,371 compared to his valuation of SCR564,518.00, he would not be able to account for the difference as it would depend on Mr Valentin had taken into account for his valuation.

[118] In regards to H1345 (Exhibit P20) he confirmed that the two ground floor units on the property were both occupied, but that the two first floor units were incomplete and had no doors or windows and therefore not habitable, although he could not rule out that they could be used for certain business purposes. He agreed that H1345 and H1346 share the same driveway although the major part of the driveway is located on H1345. He

confirmed that the 1st page of photographs and the top 2 photographs on the 2nd page depicts different façades of the two apartments on H1345, but that the building on the left of the two bottom photographs is located on H1346 and these two photographs were included only to show the access to H1345. Not having had sight of the valuation of H1345 by Mr Valentin amounting to SCR3,658,967.00 compared to his valuation of SCR3,367,080.68 he stated that he would not be able to account for the difference in the two valuations.

[119] Mr Accouche agreed that in the valuation of H1346 dated 27th February 2019 (Exhibit P21) it is stated that “[t]he main house and retaining walls partially encroaches on the government land parcel no. H10786” (see 2nd page, last sentence), while in the valuation of encroached improvements on H10786 dated 1st December 2020 (Exhibit P22) it is stated that Mr Pillay recently purchased H10786 from Mr Laramé on 31st March 2020 (see 1st page, last sentence of paragraph 3), and that therefore Exhibit P21 incorrectly stated that H10786 belonged to the Government. He admitted that although he had stated that he conducts searches in respect of properties for which he carries out valuations, he had not conducted any search for ownership of H10786 and that he had assumed that it belonged to the Government because it is a huge parcel. However he stated that the ownership of H10786 does not affect the valuation of H1346. It was put to him that given that he had testified that he carries out valuations using certain methods, the fact that he did not carry out a search after having said that he does so when carrying out valuations, could indicate that these methods are not always followed or only partly followed. He reiterated that it would not affect the valuation of H1346. He confirmed having carried out inspection of the whole house excluding private areas such as bedrooms. He also confirmed that in coming to the valuation of H1346 and the house thereon in the sum of SCR3,618,047.86, he considered, among other things, the replacement value of the house (SCR5,422,455.86) from which the depreciation (SCR2,717,600.00) was deducted. Mr Accouche further agreed that as per Exhibit P21 (valuation of H1346) & Exhibit P22 (valuation of encroachments on H6786) the main house on H1346 and the structures encroaching on H10786 are valued at approximately SCR5,000,000.00. Mr Accouche was asked to explain the disparity between his valuation of H1346 and the house thereon (SCR3,618,047.86) as well as the encroachments on H10786 (SCR2,279,362.00)

amounting to SCR5,897,409.86 and that of Mr Valentin amounting to SCR6, 442,187.00. He explained that he had not seen Mr Valentin's valuation who might not have considered the same things as he had in his valuation.

[120] In regards to the valuation of V1332 (Exhibit P23), Mr Accouche stated that he valued the land and the building thereon as a whole including the encroachments on the other parcels, as it would have been difficult to carry out a valuation of the part of the building standing on V1332 and the encroachments separately. He confirmed that the building is a commercial development which is in good condition. Further that it was fully rented out when he carried out his inspection.

[121] He also confirmed what he had stated in his report that "*[t]he total area of the property is 184.00 square metres, thus not will not attract any prospective buyers on its own due to its size*" (3rd page, 1st para), and explained that it would be difficult to sell V1332 on its own as the building on it encroaches on three other properties and would have to be sold together with the two parcels leased from Government on which the encroachments are situated namely V15988 and V15989. However this would entail requesting permission to transfer the lease to the prospective buyer and effecting the transfer which could be a long procedure. Furthermore the building also encroaches on an unregistered parcel which could possibly entail a subdivision. There would be a lot of steps to be taken before the property could be sold.

[122] Mr Accouche confirmed that he had also stated in his report that the building was built in the late 2000s (3rd page, 3rd para), based on information received from Iouanna and also from a copy of the drawings of the initial structure before improvements were effected on it, although he could not recall the date of the drawings. It was put to him that as per the title deed attached to the report, the property was purchased by Mr Pillay only in 2006 and at the time part of the building was already built on that property, so it could not be that difficult to sell the property as he was claiming. He replied that at the time it would not have been difficult but the way that leased properties are now managed is different and the procedure would be less straightforward.

[123] Again Mr Accouche could not account for the discrepancies between his valuation of V1332 and the building thereon including encroachments amounting to SCR4,866,247.77 and that of Mr Valentin amounting to SCR5,844,148.00.

[124] Although he agreed having stated that valuation of properties is not a specific science, he admitted that there are certain guidelines that all quantity surveyors/ valuers have to follow. He stated that there is a base value at which the valuation starts which is either increased or decreased based on the characteristics of the property. Consequently depending on their individual characteristics two adjacent plots of land might have different values. For example the plot with a better view will have a higher value than the one with no view although they are next to each other. Each quantity surveyor will have a slight difference in the rates used to increase or decrease the value of property on the basis of the same factors.

[125] In re-examination Mr Accouche confirmed that except for the valuation report contained in Exhibit P22 (valuation of encroached improvements on H10786), all the other valuation reports exhibited are dated 27th February 2019 and based on visits made to the properties in February 2019. Any references in the reports to February 2018 are typographical errors. When he went to carry out the survey work on H10786, Mr Pillay was in the process of acquiring the property and he was informed of the same, but the issue of ownership had no bearing on the valuation carried out on H10786 nor did not affect such valuation.

Testimony of Paquerette Lablache

[126] Ms Lablache testified that prior to meeting Mr Pillay she had a child from a previous relationship. Their relationship started around 1981 or 1982. In 1984 she left Seychelles for 4 years to study in Greece. During that time the parties maintained their relationship and Mr Pillay visited her during her first year in Greece. She moved in with Mr Pillay when she returned from Greece and they got married on 30th August 2003. They have 3 children born in 1988, 1995 and 2003 respectively, whom they both took care of.

[127] Ms Lablache testified that when she met her husband she was working as a supply teacher with the Ministry of Education. She then attended the Teacher Training College

in 1981 to 1982 and qualified as a specialist teacher, following which she taught at primary school level. She then left for her studies in Greece for a Diploma in Fine Arts. Upon her return she worked for the Ministry of Education and was responsible for Curriculum Development for Art in all schools at both primary and secondary level. After 2 years she went to study in the UK and obtained a degree in Art and Education following which she taught in several secondary schools before being transferred to the College of the Arts where she worked for 7 years as an instructor for textiles. She was promoted to the position of Senior Instructor which she occupied for another 7 years until she left her teaching career in 2008. As a supply teacher she earned SCR700.00 which increased as her career progressed so that by the time she left she was earning in excess of SCR10,000.00. In support she produced the following documents, collectively admitted as Exhibit D11:

- Certificate dated 31st December 1982 issued by the Art Section, Seychelles Teacher Training College, Ministry of Education and Information, certifying that Paquerette Lablache *“has satisfactorily completed a two-year Art Course at the Seychelles Teacher Training College from 1981 to 1982 and is qualified to teach Art at Upper Primary Level”*.
- Letter dated 7th February 2003 from the Ministry of Education and Youth (Department of Education) addressed *“[t]o whom it may concern”* certifying that *“Mrs Paquerette Lusita Lablache-Pillay was employed by the Ministry of Education from 1984 to 1998 where [she] served in the following positions:*
 - *Primary Teacher Art Specialist;*
 - *Assistant Curriculum Development Officer responsible for Primary Arts and Craft Curriculum;*
 - *Graduate Art Teacher in Secondary Schools;*
 - *Graduate Art Instructor in Post-Secondary Institution (National College of the Arts).*

The letter further stated that *“[d]uring her employment with the Ministry of Education she attended training of four years duration in Greece leading to a Diploma in Fine Arts and a two-year Bachelor of Education Training Programme in the United Kingdom”*

- Certificate dated 5th October 2006 issued by the Ministry of Education, stating that the certificate is awarded to Paquerette Lablache Pillay “*in recognition of 25 years of continuous service and dedication to the teaching profession*”.
- Certificate of Employment issued on 1st April 2008 by the Ministry of Education in respect of Paquerette Lusita Lablache-Pillay certifying that she was employed with the Ministry from 9th October 1978 to 1st February 2008, her last gross salary being SCR74,700.00 per annum. According to the Certificate she also held the following positions:
 - *Senior Instructor from 01/01/2001 - 01/02/2008*
 - *Instructor from 17/01/1994 - 31/12/2000*
 - *Teacher from 01/01/1992 - 16/01/1994*
 - *Assistant Curriculum Development Officer - from 01/03/1989 - 31/12/1991*
 - *Teacher GD VI in Secondary Schools - from 01/01/1983 - 28/02/1989*
 - *Supply Teacher – from 09/10 1978 – 31/12/1982*
- Letter dated 1st April 2008 from the Ministry of Education addressed to Mrs Lablache-Pillay informing her *inter alia*, that her resignation which took effect on 1st February 2008 had been accepted with regret and that her compensation benefits for past continuous service were being computed.
- A bundle of “SALARY ADVICE” (payslips) in the name of Lablache Lusita, P., from the “MIN OF LOCAL GOV. SPORT & CULTURE” as follows:
 - January 2002 – Teacher – Total Earnings 5,925.00 inclusive of personal salary 5,325.00, SCHEME SERV.ALLOW. 600.00 (Final Net 5,603.75)
 - February 2002 – Teacher – Total Earnings 18,525.00 inclusive of personal salary 5,325.00, SCHEME SERV.ALLOW. 600.00. Responsibility 900.00 & Responsibility 11,700 (Final Net 17,573.75)
 - March 2002 to May 2002 - Teacher – Total Earnings 6,825.00 inclusive of personal salary 5,325.00, SCHEME SERV.ALLOW. 600.00. Responsibility 900.00 (Final Net 6,458.75)
 - June 2002 - Teacher – Total Earnings 7,425.00 inclusive of personal salary 5,425.00, SCHEME SERV.ALLOW. 600.00, Responsibility 900.00 & Sal/Arrears of pay 500.00 (Final Net 7,028.75)

- July 2002 to December 2002 – Teacher – Total Earnings 6,325.00 inclusive of personal salary 5,425.00 & Responsibility 900.00 (Final Net 5,983.75)

[128] Ms Lablache also confirmed that she had been paid a gratuity payment of SCR30,000.00 in March 2004 for 25 years of service as a teacher as shown by Exhibit D2. She also confirmed having received SCR147,788.08 in June 2008 as terminal benefits when she left the Ministry of Education, as shown by Exhibit D3 and which she claims to have spent on her home, family and children.

[129] She further stated that whilst she was working as a teacher with the Ministry of Education she started running her own business. In 1995 she opened Mangouya Studio which she operated after working hours, during the weekend and holidays. She produced tourism related products which were sold at various tourist establishments and other outlets in Seychelles. The products included bags, hats, purses, souvenirs and items of clothing which she supplied to places such as the Cooperative des Artisans, the Seychelles Island Foundation and the Sainte Anne Resort, and from which she obtained an additional income. She also sold her products at Bazar Labrin which was held weekly. In addition she operated a shop at the Victoria Market for two years and the SENPA shop at Le Meridien Barbarons which she also operated for two years. Although some of these places have closed due to Covid, she still supplies her products to some which are still operating such as SENPA and Co-Operative Des Artisans. Her income from that business depended on tourism as the business catered mostly for tourists. She would earn amounts varying from SCR4,000.00, SCR5,000.00 up to SCR8,000 per month. She produced Exhibits D19, D20, D21 as evidence of the sums she had received for the sale of her products for the years 2012, 2013 and 2014 respectively. These exhibits with the heading “*Mangouya Sales*” comprise extracts from the book/ledger in which she made monthly entries for 2012, 2013 and 2014, listing the people/shops/institutions to which she had supplied products and the sum received from each of them. Ms Lablache further explained that she sometimes supplied products other than those she produced, or rendered one-off services to organisations/people who were not her usual clients. For example: she supplied College of the Arts with textiles and painted material for their students to use (Exhibit D19, Entry for May 2012 - No.10); she printed logos on tee-

shirts for Fishermans Cove Hotel (Exhibit D19, Entry for June 2012 - No.8): she printed logos on tee-shirts for SPTC (Exhibit D20, Entry for January 2013 - No. 7). Exhibit D22 also extracted from the book/ledger bears the heading “*Mangouya Sales Comparison 2011-2012*” and compares the total sum received for each month in 2011 to the total sum received for the corresponding month in 2012 from each person/shop/institution to which Ms Lablache supplied her products. The purpose of this was to ascertain whether there was any increase or decrease in the sales. She also mentioned that she had been selling her products at the Bazar Labrinn since 2008 and although the sales were not recorded in the monthly entries in the book/ledger they were recorded and feature in Exhibit D22. She further explained that although she had been running her business full time since 2005 and recorded her income in the book/ledger since that time up to the time that the Covid pandemic struck, she has not been able to photocopy all the entries for production to the Court.

[130] Ms Lablache testified that she then launched a textile design and fashion business - Mangouya Fashion - and in 2002 started a fashion show group which did fashion shows at different hotels and did weekly fashion shows at Le Meridien Barbarons. They also performed at the request of other organisations such as the Ministry of Culture. Over and above her earnings as a teacher, and in addition to the money she made from the sale of the aforementioned products, Ms Lablache was earning an average income of SCR10,000.00 to SCR12,000.00 per month from the fashion show business and SCR200,000.00 to SCR300,000.00 annually from Mangouya Fashion. The money from her various businesses was re-injected in the businesses and also spent on the family’s upkeep.

[131] Ms Lablache testified that after she left her employment with the Ministry of Education in 2008, she worked full time in her own business and employed 3 of her former students. She continued what she had previously been doing but on a bigger scale. Eventually she started renting the shop at English River/Castor Road (on V1332) from which she operated her business from 2009 to 2011. After she moved out of these premises, she operated her business from home until 2013, when she got a shop from SENPA at CODEVAR premises. Ms Lablache stated that when she worked full time in her

business, it flourished and she made more money than she had made from teaching and that the money she made was invested in the studio and used to promote and expand her business.

[132] Ms Lablache's business is classified as a small business and registered as a Cottage Industry. She produced Exhibit D12 a document dated 17th June 2016 addressed "TO WHOM IT MAY CONCERN" and signed by Ms Penny Belmont, Chief Executive Officer of the Small Enterprise Promotion Agency (SENPA) regarding "RE: PAQUERETTE LABLACHE – COTTAGE CERTIFICATE NBR:CL00239" which states that "Mrs. Paquerette Lablache Pillay of Tailoring and Handicraft sector is registered under the Cottage Industry License since 2005 until now" and that "Mrs Lablache is a committed entrepreneur".

[133] Ms Lablache also paid Income Tax of 1.5% on the income made by her business. She produced Exhibit D13 – a letter dated 14th September 2020 from the Seychelles Revenue Commission addressed to Ms Paquerette Lablache Pillay, containing details of payments made by her from 2012 to 2019. According to the letter she paid the following: for 2012 Income Tax of SCR750.00 for each month; for 2013 Presumptive Tax of SCR2880.63 and Income Tax of SCR750.00 for each month; for 2014 Presumptive Tax of SCR3401.20 and Income Tax of SCR1215.00 for January and SCR602.50 for each of the remaining months; for 2015 Presumptive Tax of 5,675.00; for 2016 Presumptive Tax of 4,634.40; for 2017 Presumptive Tax of 2,925.00; for 2018 Presumptive Tax of 3,536.25; and for 2019 Presumptive Tax of 3,550.20. The total balance paid is SCR52,445.18.

[134] Ms Lablache stated that her shop is now closed as sale of her products depended on tourism which was affected by the Covid pandemic. She has lost everything including her sales deposits and the shop in town. She is now being assisted by the Government and does not know what the future holds.

[135] Ms Lablache accepted Mr Pillay's claim that he helped with transporting the models for the fashion shows, stating that he had done so as they were family. She had twelve models and only one vehicle so he helped with transporting them.

[136] She denied his claim that at the time that she was operating her business from home he was solely paying for the utilities. She stated that she helped pay for water and electricity. As for his claim that she was occupying the studio rent-free, she stated that at that time they were married and living as a family and she sees no reason why she should have paid any rent for using the studio which belongs to both of them. Furthermore the whole family benefitted from the income derived from the products she made in the studio.

[137] In regards to Mr Pillay's claim that he assisted Ms Lablache in purchasing her vehicles, she stated that in 2003, she purchased a Honda HRV which she sold to purchase an ix35. The ix35 was paid for with the proceeds of sale of the HRV and a loan. In 2015 she sold the ix35 and purchased an ISUZU KV300. She stated that all the vehicles were purchased with loans borrowed by Mangouya Creations and paid off by the business with no assistance from anyone, except for the payment of SCR5000.00 per month for 9 months by Mr Pillay towards the vehicle loan for the ISUZU. She explained that they had agreed that she would move out of the premises at English River/Castor Road (on V1332) so that they could rent it to her brother at a higher rent than she had been paying. Thereafter, given that they were getting a higher rent, Mr Pillay offered to help her with repaying her vehicle loan which he did for 9 months, but stopped when they separated. She stated that she paid for the insurance and road fund licence for the ISUZU through Mangouya Creations. Ms Lablache does not believe that she owes Mr Pillay any money for any of the vehicles. She also expressed puzzlement at Mr Pillay's statement that banks do not give loans to purchase new vehicles and stated that as far as she knows they do give such loans, as shown by the correspondence between her and MCB in regards to the loan for the purchase of the brand new ix35 registration number S18810, exhibited. She produced as Exhibit 14 (collectively) a bundle of documents relating to the vehicles, comprising the following:

ISUZU S24137

- A Certificate of Vehicle Registration dated 6th September 2019 issued by the Seychelles Licensing Authority for vehicle registration number S24137 (SPACE CAB PICK UP, ISUZU KB300) in the name of Mangouya Creations. The registration date of the vehicle is stated to be 22nd January 2015.

HONDA S11649

- A letter dated 26th February 2004 from H. Savy Insurance Co. Ltd (“HSI”) addressed to Ms Paquerette Lablache regarding a change in the motor insurance policy for vehicle registration number S11649 in her name. Attached is an ENDORSEMENT SCHEDULE for the change in the policy and a DESCRIPTION OF VEHICLE namely a Honda Jeep.
- An Inspection Report issued by the Vehicle Testing Station dated 05/01/2007 for Honda HR-V Registration No. 11649
- A letter from Barclays Bank (Seychelles) Ltd to the Seychelles Licensing Authority dated 31st May 2011 regarding “*MOTOR VEHICLE S11649 in the name of Mrs Paquerette Lusita Lablache-Pillay*” confirming that the bank no longer holds an interest in the said vehicle.
- A bundle of documents from HSI regarding the Insurance Policy for vehicle registration number S11649 in the name of Ms Paquerette Lablache as the insured, comprising :
 - Renewal Certificate & Debit Note for period 13 January 2005 to 12 January 2006
 - Policy Renewal Notice for period 21 Jan 2010 to 20 Jan 2011
 - Debit Note dated 31 January 2011 in the sum of SCR3,395.00

ix35 S18810

- A letter dated 9th February 2010 from Mrs Paquerette Lablache Pillay to The General Manager, Mauritius Commercial Bank requesting an exemption from taking a life insurance policy as security for her vehicle loan
- A letter dated 9th December 2010 from Mrs Paquerette Lablache Pillay to The General Manager, Mauritius Commercial Bank requesting a loan of SCR250,000.00 for part payment for the purchase of Hyundai Jeep ix35 at the cost of SCR477,000.00. As security for the loan she proposed to mortgage property No. H1343.
- A letter from Mr Walter Pillay to the General Manager, Mauritius Commercial Bank, dated 10th December 2010 headed “*Re: Loan request to purchase brand-new vehicle*” in which he states that “[m]y wife wishes to purchase a Hyundai

ix35 jeep which is at a cost of SR 477,000.00. She is requesting a loan of SR 250,000.00 to meet a part payment of the above mentioned vehicle. In regards to the above I wish to mortgage my property NO. H1345 as a guarantee”.

- A letter dated 24th December 2010 from the Mauritius Commercial Bank (Seychelles) Ltd addressed to Mrs Paquerette Lablache headed “*Re: Loan Application*”. The letter refers to the loan application of SCR250,000.00 for the purchase of a new vehicle and informs Ms Lablache that they are awaiting her Profit & Loss Account for 2008 & 2009.
- A letter dated 25th January 2011 from the Mauritius Commercial Bank (Seychelles) Ltd addressed to Ms Paquerette Lablache headed “*Re: Loan Application*”. The letter conveys approval for a loan of SCR250,000.00 for the purchase of a new vehicle to be repaid by 60 monthly instalments of SCR5,435.61 and to be secured by a Standing Order, Life Mortgage Protection Insurance and a Third Line Mortgage on parcel H1345.
- A vehicle Test Certificate issued by the Seychelles Land Transport Agency dated 02-Jun-2011 for vehicle Registration No. S18810, Hyundai Jeep ix35 4X4 in the name of Lablache-pillay Paquerette.
- A bundle of receipts issued by PMC Auto (Pty) Ltd, bearing Customer Name: Mrs Pacquerette Pillay for payment on ix35 as follows:
 - Receipt No: 1-3984 dated 7/8/11 in the sum of SCR25,000.00
 - Receipt No: 1-4209 dated 9/9/11 in the sum of SCR15,000.00
 - Receipt No: 1-4332 dated 10/15/11 in the sum of SCR10,000.00
 - Receipt No: 1-4394 dated 11/8/11 in the sum of SCR10,000.00
 - Receipt No: 1-4571 dated 12/30/11 in the sum of SCR10,000.00
 - Receipt No: 1-4666 dated 1/30/12 in the sum of SCR5,000.00
- A bundle of documents from HSI regarding the Insurance Policy for vehicle registration number S18810 in the name of Mrs Paquerette Lablache-Pillay as the insured, namely:
 - Debit Note dated 3 June 2011 in the sum of SCR1,079.00
 - Debit Note dated 21 January 2012 in the sum of SCR7,646.00 & Renewal Certificate for period 21 January 2012 to 20 January 2013

[138] In regards to her contributions towards Inesh's maintenance, Ms Lablache testified that she paid SCR1000.00 until Covid struck and she found herself out of a job and had to stop the payments. However other than that, she had opened a bank account for him in which she deposited varying sums depending on her income. In support she produced **Exhibit D15** – a statement of bank account number 00000482517 in the name of Mr Inesh Ethan Pillay C/O Lusita P Lablache-Pillay for the period 05/03/2019 to 31/08/2020. The opening balance at 05/03/2019 is SCR12,901.49, and from that date to 25/02/2020 nine cash deposits of SCR500 and 3 cash deposits of SCR1000.00 are recorded. From 01/06/2020 to 31/08/2020 four transfers of SCR500.00 made by way of Standing Order from Lusita P Lablache's MCB account, is recorded as support. The closing balance as at 31/08/2020 is SCR23,216.84.

[139] Ms Lablache stated that when Iouanna started school Mr Pillay paid for her fees, and when Kimberley started Ms Lablache paid for hers. When Iouanna completed secondary school, Inesh started school and Mr Pillay took over paying for Kimberley while Ms Lablache paid for Inesh until the separation of the parties in 2016. When they separated only Inesh was still at school. She stopped paying the school fees because Mr Pillay was having extramarital affairs and spending money on his partners and hence could afford to pay for Inesh's education. She produced a bundle of receipts issued by Independent School as Exhibit D16, which she stated was for tuition fees, as follows:

- Receipt No. 46541 dated 05/02/14 for the sum of SCR5,000.00 received from Ms Paquerette Lablache Pillay as part payment tuition fee 1st term 2014 (Inesh Pillay)
- Receipt No. 46987 dated 24/03/14 for the sum of SCR5,500.00 received from Ms Paquerette Lablache Pillay as part payment tuition fee 1st term 2014 Inesh
- Receipt No. 47927 dated 29/05/14 for the sum of SCR5,500.00 received from Ms Paquerette Lusita Lablache Pillay as tuition fee 2nd term
- Receipt No. 48356 dated 11/07/14 for the sum of SCR5,000.00 received from Ms Paquerette Lablache Pillay as tuition fee
- Receipt No. 49097 dated 09/09/14 for the sum of SCR5,500.00 received from Ms Paquerette Lablache Pillay as part payment tuition fee 2014

- Receipt No. 49834 dated 10/11/14 for the sum of SCR5,500.00 received from Ms Paquerette Lablache Pillay as tuition fee paid for Inesh
- Receipt No. 50513 dated 27/01/15 for the sum of SCR6,000.00 received from Ms Paquerette Lablache Pillay as tuition fee for Inesh Pillay
- Receipt No. 51395 dated 09/04/15 for the sum of SCR6,124.00 received from Ms Paquerette Lablache as tuition and books payment
- Receipt No. 52369 dated 09/06/15 for the sum of SCR12,000.00 received from Ms Paquerette Lablache Pillay as tuition fee 2nd term 2015
- Receipt No. 54250 dated 27/01/15 for the sum of SCR12,000.00 received from Iouna Pillay as part paid tuition for Inesh Pillay

[140] Exhibit D17 is a current account statement of 10 pages for account number 00000194042 held by Miss Paquerette Lusita Lablache-Pillay with the Mauritius Commercial Bank for the period 13/03/2014 to 01/01/2016. Handwritten in red at the top of the first page, presumably by Ms Lablache are the words “*School Fees 2014 – 2015 Inesh Pillay*”. The transaction details for some of the sums debited from that account are circled in red and Independent School handwritten next to them, again presumably by Ms Lablache. The dates and sums are as follows, and except for a few sums appear to correspond with the sums stated on the receipts comprising Exhibit D16:

- 01/04/2014 SCR5,500.00
- 03/06/2014 SCR5,500.00
- 17/07/2014 SCR5,000.00
- 12/09/2014 SCR5,500.00
- 11/11/2014 SCR5,500.00
- 29/01/2015 SCR6,000.00
- 14/04/2015 SCR6,124.00
- 11/06/2015 SCR12,000.00
- 10/12/2015 SCR6,000.00

[141] Ms Lablache stated that it was she who had wanted the children to attend Independent School and that she helped them with their homework and generally with their studies and education. She also purchased their uniforms, took them to school and went to school

to resolve any issues which arose. Contrary to what Mr Pillay asserts, she was very much involved in her children's education and their lives. She not only took care of them but also took care of the home. They never had a maid and she did all the cleaning, laundry, ironing and household chores. Although the children helped with a few things, they were mostly involved in their studies and had no time for chores. As for the cooking, it was mostly done by Mr Pillay although Ms Lablache would occasionally help. Ms Lablache stated that Mr Pillay was often away on overseas business trips, and would travel every two to three months leaving her to take care of the children and the household. In addition she had to work to be able to earn enough to fulfill her financial responsibilities towards her children and to contribute towards household expenses. Because she was a seamstress, Mrs Lablache also sewed all the soft furnishings in the matrimonial house including curtains and bedsheets, for which she also provided all the raw materials such as fabric. Mr Pillay only provided the curtains for the room he had initially occupied.

[142] As for Mr Pillay's claims that he assisted Ms Lablache in setting up her business and even purchased her sewing machine for her, she stated that he imported industrial sewing machines for sale in Seychelles at the time, and that she paid him for her sewing machine. In addition she put him in contact with people whom she knew in the textile and sewing industry so that he could supply them with sewing machines as well.

[143] Ms Lablache also stated that she assisted Mr Pillay in his electrical contractor's business. She taught him how to fill in forms so that he could obtain his license. She also helped him with his correspondence, invoices and other things that he needed help with although she was not paid for the same. In any case she was not expecting any remuneration and did so out of good will as they were family.

[144] In regards to Ms Lablache's relationship with her children, she states that she has lived with Mr Pillay and their children up to the time that she and Mr Pillay separated in 2016. When they separated, she initially slept in a guest room in the matrimonial home, but because of certain malicious acts of Mr Pillay she filed a complaint against him before the Family Tribunal, which made an order for her to occupy the house next door to the matrimonial home (on H1345). Ms Lablache testified that prior to the parties' separation

Mr Pillay held a meeting with the children after which her relationship with the children started to deteriorate. The children refused to tell her what their father had told them at the meeting, but they started to take their father's side because he bribed them with money, expensive gifts and favours. She stated that she has never done anything against her children's interests, that she has worked hard and done all she could for them, and that she could not have done more. She denied telling them that they would find themselves on the streets if their father dies before her, and believes that Mr Pillay is making it up to justify his transfer of the immovable properties registered in his name to them, which he did to swindle her out of her share of the properties.

[145] Mrs Lablache states that she feels bad about the situation with her children. She relates that the previous Christmas (2019) Inesh came to see her and told her that they should communicate and stop what was going on. She replied that she had done nothing wrong and he promised to visit her often but did not do so. She states that Inesh lives in the matrimonial home which is only occupied by an Indian worker who works for Iouanna, as his father does not live there. Although most of the time Inesh is alone there or sleeps over at his friends' houses, she is not allowed to have him to stay over at her place or spend time with her. The Social Services say that he is old enough to take such decisions but Ms Lablache thinks that he is confused. She says that he behaves in one way and says one thing when he is with her, and thinks and behaves differently when he is with his father. As for Kimberley and Iouanna, they take their father's side because of the gifts and favours they get from him, such as a brand new car or financial assistance.

[146] Ms Lablache testified that at 59 years old her prospects of getting a job are very poor, and that the Covid pandemic has aggravated the situation: she was self-employed but is now out of a job and is still waiting to see what will happen next. She only has a little savings which will not be enough for her to start over again. For that reason she would like a half share of all the properties that were owned by the parties, more specifically she would like to be awarded the ex-Herminie property (H1345 with the house thereon) and the two enclaved plots next to it (H6465 & H6466), as well as be paid a half share of the total monetary value of the remaining properties, such value to be based on the valuation done by surveyor Mr Nigel Valentin. She states that it has to be borne in mind that Mr Pillay

started adding another storey to the house she is occupying on the ex-Herminie property which has not been completed, as a result of which rainwater leaks inside the house through the roof causing humidity and infestation by all sorts of insects, and which requires a substantial amount of money to be completed.

[147] Ms Lablache further testified that after the parties' separation in 2016, she continued using her studio (located on H1346 & H10786) for her work, but Mr Pillay did everything to hinder her work. First he installed a gate with a padlock to prevent her from having access to the studio and she had to obtain an Order from the Family Tribunal to regain access. After that he disconnected the water and electricity supply to the studio, and she had to buy a hose to get water from the house she is occupying to the studio to be able to do her printing work. It was tiring and she got fed up after a while and did her printing at the house where she is living using a sheet of plywood and two chairs to support it. She says that even if there is demand for her products, she cannot take a lot of work because of the limited space for her to work in as she cannot use the studio any more. She also had to stop sewing at the studio and now uses it only as storage.

[148] Ms Lablache states that she would like to have a place of her own where she can start afresh and rebuild her studio so that she can work and conduct her business in a conducive work environment. At the moment she is both living and working in a tiny two bedroom house (on H1345) which serves both as a house and studio, and the only properties she owns are the ones she owns jointly with Mr Pillay (H1345 and H6465 & H6466) and her ISUZU pickup truck. The only way that she can move on is if she is compensated for her contributions to the matrimonial properties of the parties and awarded her share thereof.

[149] Ms Lablache's evidence in respect of each of the properties subject matter of this claim is found below.

Title H1346

- [150] When the parties met, Mr Pillay already owned H1346. Ms Lablache confirmed that she is not making any claims to the land comprised in H1346. She testified that every Sunday until she left for Greece, she used to accompany him to the property to help with the site clearing, which involved cutting down trees and clearing the debris. She also did some cooking.
- [151] The house was built after Ms Lablache left for Greece and had been completed when she returned to Seychelles. Upon her return she moved in straightaway. Mr Pillay told her he had taken a loan of SCR50,000.00 to start the construction. At the time the house of one storey comprised 2 bedrooms one of which Mr Pillay was using, a bathroom, kitchen, living-room and dining-room. The house did not have 3 bedrooms as claimed by Mr Pillay. Ms Lablache confirmed Mr Pillay's testimony that the bedroom he was using was furnished and that there were only a few things in the house that he was using (i.e. 2 plates, two mugs, kitchen utensils etc.).
- [152] She testified that the house was furnished by both parties. She explained that whilst she was in Greece she was paid $\frac{2}{3}$ of her salary which was partly used for her first child's maintenance and the remainder of which remained in her bank account. When she returned from Greece after four years she had considerable savings although she cannot recall how much. She was also promoted to the post of specialist teacher and her salary increased to SCR4,000.00.
- [153] After the parties got married in 2003, the house was extended by adding a second storey comprising three bedrooms with en-suite bathrooms. Both parties helped to buy furnishings for the second storey, such as furniture, curtains, bedsheets and towels. Ms Lablache stated that whilst she was not involved in the financing of the actual construction of the second storey, she not only helped with the furnishings but at the same time contributed towards other household and family expenses such as clothes for the children, utensils for the house. In her words *"For instance let us say he was the one who put the windows and doors, etc, I was helping to buy bedsheets that we need for the bed, the towels, clothes for the children, utensils for the house, stuff like that, I help on this side and he helps on the other side"* (Pg 19 – 17 proceedings of Sep 2020).

[154] She also stated that in 2004 she received a gratuity payment of SCR30,000.00 that she used to pave the front of the matrimonial home, which added value to the property. Exhibit D2 is a letter dated 3rd March 2004 addressed to Ms Paquerette Lusita Lablache from the Ministry of administration and Manpower Development confirming payment of the said sum for completion of 25 years of continuous service. She denied using that money for her business or to travel although she confirmed that she had a business at the time.

[155] Ms Lablache also produced another letter Exhibit D3 dated 26th June 2008 from the Vice-President's Office to the Ministry of Education advising that compensation in the sum of SCR147,788.08 had been paid into Ms Lablache's account. She explained that she was paid this compensation when she terminated her contract with the Ministry of Education. She invested that money in the matrimonial home and also spent it on the children. Since she is a fashion and textile designer, she was responsible for all the children's clothing including uniforms as well as soft furnishings for the home such as curtains. She provided all the fabric and material for the same and also took care of the sewing. The money was also used for other things for the home and family.

[156] Ms Lablache stated that she is entitled to a half share of the matrimonial home because she has contributed monetarily towards it as well as for the family for the 36 years that she has been in a relationship with Mr Pillay. Furthermore she has put in a lot of effort towards raising and taking care of the children and family during half of her life that she spent at the family home with them.

[157] Ms Lablache testified that in addition to the matrimonial home, there is also a two storey studio on H1346, which started out as a small structure and has been extended over the years. She states that she contributed to the construction of the studio with loans and other income that she earned, and also paid for things such as toilets, windows as well as for repairs to the studio. She is claiming a share in the value of the studio based on her contributions thereto.

[158] Ms Lablache stated that she borrowed 3 loans: in 2016 she borrowed a loan of SCR80,000.00 for working capital, she then borrowed another loan for SCR80,000.00 for

studio renovation and another of SCR250,000.00 to upgrade the studio. As evidence of the first loan of SCR80,000 she produced Exhibit D8 (previously Item 1) - a letter of offer from Barclays Bank (Seychelles) Limited to Mangouya Creations (the Borrower) represented by Mrs. Paquerette Lablache Pillay for an unsecured business loan of SCR80,000.00, the purpose of such loan being “FOR WORKING CAPITAL”. Attached are the loan terms and conditions. She stated that this loan was used “*to upgrade the studio, to buy materials and to do other things that the studio required*” (Pg 6 proceedings of 8th October 2020 a.m.) and was repaid by Mangouya Creations which is owned by her. The letter of offer was signed by Ms Lablache on behalf of the borrower on 22/3/16, signifying the acceptance of the offer on the terms and conditions set out by the bank and authorising the bank to debit account no. 0101019055 for the monthly loan repayments. The attached loan terms and conditions are also signed by Ms Lablache on behalf of the borrower signifying acceptance and agreement to abide by the said terms and conditions.

[159] Ms Lablache also produced Exhibit D9 (previously Item 2) as evidence of the loan of SCR250,000.00 – a letter of offer from Barclays Bank (Seychelles) Limited to Mangouya Creations (the Borrower) represented by Mrs. Paquerette Lablache Pillay for an secured business loan of SCR250,000.00 to which is attached the loan terms and conditions, the purpose of such loan being “TO UPGRADE THE STUDIO”. The loan is secured by a 1st Line charge over property parcel V1332. She stated that the money obtained from the loan was used to upgrade the studio by providing windows, a toilet and other bathroom fixtures and also to assist with completing the top storey of the studio. She stated that this loan was also repaid by Mangouya Creations. Again the letter of offer was signed by Ms Lablache on behalf of the borrower on 9/10/14 signifying acceptance of the offer on the terms and conditions set out by the bank and authorising the bank to debit account no. 0101019055 for the monthly loan repayments. The attached loan terms and conditions are also signed by Ms Lablache on behalf of the borrower signifying acceptance and agreement to abide by the said terms and conditions.

[160] Ms Lablache further produced Exhibit D10 - a letter of offer from Barclays Bank of Seychelles Limited to Mrs. Paquerette Lablache Pillay T/as Mangouya Creations (the Borrower) for an unsecured business loan of SCR80,000.00 for the purpose of “Business

expansion”. Attached to the letter are the loan terms and conditions. She stated that this loan was also repaid by Mangouya Creations with no help from anyone else. As with the other two loans, the letter of offer was signed by Ms Lablache on behalf of the borrower on 17/04/2012, signifying the acceptance of the offer on the terms and conditions set out by the bank. The attached loan terms and conditions are also signed by Ms Lablache on behalf of the borrower signifying acceptance of and agreement to abide by, the said terms and conditions.

[161] Ms Lablache confirmed that she was loaned the sums stated in the three aforementioned letters of offer.

[162] In cross-examination she admitted that she did not have any receipt from any contractor or other person for the extension of the matrimonial home on H1346 house, but stated that she had made contributions thereto and given that the parties were married she saw no reason for requesting any receipts. She also stated that the extension of the matrimonial home was done by Mr Pillay himself and a few Indian workers and not by a contractor, and admitted that she did not help him buy any of the materials or pay the Indian workers. She also admitted that she made no direct financial contribution to the construction of the structure of the house or the extension or any repairs thereto.

[163] As for the 3 loans she had spent on the studio which stands partly on H1346 and partly on H10786 - two of SCR80,000.00 one of which she also spent on materials for her business and one of SCR250,000.00), it was put to her that the only evidence she has produced in that respect are offers for the loans (Exhibit D8 for loan of SCR80,000.00; Exhibit D9 for loan of SCR250,000.00; and Exhibit D10 for loan of SCR80,000.00) and not the loan agreements themselves. She stated that the loans were taken and that she could bring proof of the same.

[164] Ms Lablache further stated that no contractor was involved in the construction or extension of the studio which was done by Mr Pillay and some Indian workers, as the construction was illegal and made without planning permission. Mr Pillay started the construction and she then made monetary contributions to have it completed. They both paid for construction materials such as cement, crusher dust, sand, steel pipes and for the

wiring but she admitted that she had no receipts to show her direct contributions of any of that or the workers' salaries.

[165] In further cross-examination, in reply to whether Mr Pillay's workshop and office is in the basement of the building on V1332, Ms Lablache replied that he actually lives in his so-called office with his mistress and not at the matrimonial home. As to him living there and not at the matrimonial home to avoid problems as she has reported him at least 7 times to the police, she replied that she reported him to the police and even filed a case against him before the Family Tribunal which is still pending, because he persecuted and harassed her: he broke her water hose and her air-conditioning unit, he removed the roofing on her studio and scratched both sides of her pick-up truck. Furthermore he still comes to Majoie every day, and furthermore every Sunday when he is drunk in the guise of coming to his mother's place which is on the other side of the semi-detached house where Ms Lablache lives, he looks inside Ms Lablache's house, swears at her and picks fights with her, which is another reason why she reported him to the police. She also asked the Family Tribunal to ban him from visiting his mother but stated that this is less of a problem now that they are no longer on speaking terms. Ms Lablache stated that there is a good distance between the matrimonial home and the house she is occupying, that there is even a road that separates them, and there is no reason for him to come to her house. She further stated that they would be able to live next to each other if they both stick to their respective houses and do not look for trouble with each other but that he is the one who comes to bother her.

[166] It was put to her that nevertheless the children are all on speaking terms with Mr Pillay but do not speak to her and she maintained that this is because Mr Pillay bribes them. It was further put to her that in the circumstances and because of her negative attitude towards the children it was prudent for Mr Pillay to protect them by transferring his property to them, prior to the divorce and settlement of property between the parties. She denied that he did this to protect them and maintained that it was to swindle her out of her rightful share of the properties. It was put to her that if he had wanted to do so he could have sold the properties to strangers and transferred the money to an offshore account in the BVI but she stated that he has a plan which they all know about. Furthermore if he

was trying to protect them he would not be drunk every day so that even the people in the neighbourhood are complaining about him.

[167] Ms Lablache agreed that she had earlier stated that she does not have much savings and requires an award from the court as it will be difficult for her to start with nothing at her age. She also admitted having stated that she used to earn from SCR200,000.00 to SCR300,000.00 per year but denied that she has been able to accumulate and save that money and is only trying to obtain a share of Mr Pillay's money. She explained that the SCR200,000.00 to SCR300,000.00 was earned from fashion shows which stopped in 2020 as there was no longer any demand for the same from the hotels. She also could not save anything from her other craft work that she was doing.

[168] Ms Lablache confirmed that she paid for Kimberly's school fees up to the time that Inesh started school, including the two years while she was studying for her IGCSEs but did not pay her University fees. She reiterated that also paid for Inesh's schooling up to the parties' separation in 2016. In addition to the money in the bank account which Ms Lablache had opened for Inesh, she also paid maintenance of SCR1,000.00 for him into Mr Pillay's account as ordered by the Family Tribunal.

[169] Ms Lablache stated that Mr Pillay disconnected the water and electricity supply to the studio in 2016 when they separated. She explained that the electricity and water connection for the studio are not separate from that of the main house, so that there is one utility bill for the two and Mangouya Studio's bills were in the name of Mr Pillay. She stated that prior to the parties' separation she contributed to the household expenses which included utility bills thereby indirectly paying for the studio's utility bills. It was put to her that she never paid any utility bills either for the house or the studio but relied on Mr Pillay for the same as he was generous to her as he was to all the people he loved, which she denied. Under further cross examination she stated that she moved out of the studio because the water was disconnected and she could not do her printing work. She did not apply to PUC for a separate meter because she was not prepared to invest more money in the studio knowing that she was going to be kicked out of there.

[170] Ms Lablache also confirmed that she did not pay any money for the land purchased by Mr Pillay from Mr Laramé (H10786) on which part of the studio encroaches.

[171] Ms Lablache was further cross-examined in regards to her testimony that the children favoured their father over her because he gave them a lot of things. She stated that apart from the immovable properties which Mr Pillay had transferred to them, he had assisted Iouanna in her business for importation of bedsheets, towels etc. from Malaysia, although initially it was Ms Lablache who supported Iouanna with her business as most of the items she first sold in her shop were her mother's products. He also paid off her loan for the purchase of her first car. She stated that Iouanna initially worked for her, and that she is now the Secretary General of the Seychelles Chamber of Commerce and Industry.

[172] Mrs Lablache could not say specifically how Mr Pillay had helped Kimberley, but stated that he gives her money whenever she needs to buy something, and that she has just started working but has a new vehicle which he must have helped her purchase. She stated that Kimberley had a degree in law and that she was to sit for her bar exams in November 2020.

[173] As for Inesh, she stated that he turned 18 in January and was attending school at the S.I.T. Again she could not specify what help he had received from Mr Pillay but stated that he obliges when Inesh needs money or favours. For her part she reiterated that she had been paying maintenance of SCR1,000.00 for Inesh, and in addition has been depositing money for him in the MCB bank account which she had opened for him in the year 2000. Initially she deposited SCR1,000.00 which she then reduced to SCR500.00 when Covid affected her business. Although he knows of the existence of the account, Inesh does not have access to it as he was still a minor when it was opened, but Ms Lablache intends to give him access thereto when he is 21 and starts working. When Ms Lablache found herself out of work because of Covid she told Inesh that she would be unable to continue paying his maintenance of SCR1,000.00 but would continue paying SCR500.00 into his bank account which is debited directly from her account.

[174] It was put to Ms Lablache that just as Mr Pillay had been generous towards her children and helped them either with money or other things, he had also done the same for her

during the time they were together, before they started having problems: that he would give her everything she wanted, pay her bills and repay her car loans. She denied this stating that she had been working and had brought evidence of her earnings from her business since 2003. Furthermore all the vehicles she had owned had been registered in her name and she was the one who had repaid her loans.

[175] It was further put to her that he had treated her as he is now treating his children: that he paid for all the household and family expenses as well as their holidays overseas. She replied that the utilities and household expenses were shared between the two of them and they both did their part in that respect. She further explained that although he was the one who went to pay the water and electricity bills as they were in his name, she gave him money to go towards paying the bills, hence the reason why she had no receipts for the same. The Intelvision bill, on the other hand, has been in her name but she had to cancel the subscription after she moved out because the bills were not being paid.

[176] Ms Lablache stated that the sum of SCR8,000.00 to SCR10,000.00 she earned from her business was the profit that she made exclusive of taxes. She admitted that she does not have any receipts for any of that money which she spent on household and family expenses, and explained that is because they were living as a family. Furthermore as a member of the family she had to contribute to support the family including the children and herself as nobody would accept to support someone who was not pulling their weight and contributing their fair share.

[177] In re-examination Ms Lablache stated that a bigger part of the studio falls on the Larameland and the smaller part on H1346 but that she would still be seeking a share in the value of the studio because she invested in it. Ms Lablache confirmed that although she had only produced letters of offer for the loans she had borrowed for the studio, the letters were followed by loan agreements and she had obtained the loans.

[178] She also admitted that the Planning Authority found out through her that Mr Pillay had built the studio and was building another storey on the semi-detached house on H1345 without planning permission. However they only found out because he had removed the roof from the studio during the rainy season thereby damaging her raw materials, and she

had enquired from the Planning Authority why he was given permission to do so while they were still married and she was still occupying the studio. They found out about all the illegal structures when they came to investigate her complaint. She claims that at the time she did not know that the constructions had been done without planning permission and she had not reported the matter with any malicious intention.

[179] In regards to the suggestion in cross examination that she is seeking to deprive her children of the properties transferred to them by their father, Ms Lablache stated that Iouanna who is the Secretary General of the SCCI and Kimberley who holds a law degree and is employed in a law chambers are both earning salaries, and are able to cater for their own needs and acquire properties. As for Inesh, he is doing very well at school and will be able to get a good job eventually and fend for himself and also acquire properties. She confirmed that all the properties which were registered in the sole name of Mr Pillay were transferred to the children in 2016 during the course of the divorce proceedings and stated that this was to ensure that she would not be able to obtain a share in these properties.

[180] She denied having a problem with her children and stated that even if they do not want to talk to her now they will do so one day, and that furthermore she has fended for them until they are all grown up and still loves them. She denied that she would ever throw them out on the street and stated that when she dies all her property will go to them.

[181] As to the suggestion that she was not a good mother for asking the court to divest her children of the properties and award them to her, she stated that the transfer of the properties solely to the children is unfair to her. She and Mr Pillay were together before the children came on the scene and when transferring the assets he should have taken into account that she was the one who has been by his side all along and helped him achieve everything that he has achieved so far. As to Mr Pillay's claim that he did this for the children's protection, she stated that all parents want to protect their children and that by asking for her share in the property she has no intention of not protecting her children.

[182] As for the further suggestion that Mr Pillay was generous towards her and helped her in the same way that he helped his children, and paid for many things for her, Ms Lablache

stated that they had both helped each other. She had helped him in selling industrial sewing machines and in the running of his own business especially with correspondence and invoices. She had also helped the children: she employed Iouanna when she was laid off from her job at Kenwyn House and even put her in charge of the cafeteria which she ran at the Maritime School. She further pointed out that during the marriage she had been in employment and running a business, and had been earning an income.

[183] In regards to Ms Lablache not making direct contributions towards the various loan repayments or paying the contractors or workers who worked on the construction of the structures on the various properties (including on H1346), Ms Lablache stated that she contributed indirectly when she paid for the household expenses. Instead of paying for the household expenses, Mr Pillay used his money to pay for the loans, contractors or workers.

[184] Ms Lablache also denied harassing Mr Pillay and stated that in fact he is the one who harasses her although to a lesser extent now since he is no longer on speaking terms with his mother and no longer comes to the semi-detached house which they occupy, and where he used to come and swear at her and pass sarcastic comments. She stated that they don't see each other as their residences are separated by a road and she only goes on his property to get materials from the studio when he is not there. She only sees him when she goes to get her truck to go to work as it is parked in the garage located on the road.

Title H6638

[185] Although it features in her affidavit, Ms Lablache stated that she was not aware of Title H6638, and that it is possibly the part of Mr Laramé's land next to the matrimonial home on which the studio encroaches, and which Mr Pillay recently purchased. It is noted that the studio actually encroaches on H1346.

Title H1345

[186] It is clear that Mrs Lablache, in her testimony, confused H1345 and H1343 of which Titles H6465 & H6466 are subdivisions, especially in terms of the sums paid for the purchase of the properties. Her testimony in regard to H1345 will be set out taking that into account.

- [187] She explained that the reason the parties purchased H1345 which she also referred to as the “*ex-Heminie property*”, was because former Minister Herminie’s house located on H1345 encroached onto H1346 where the matrimonial home stands, which led to a never-ending dispute between Mr Herminie and Mr Pillay. She was advised by Mrs Shroff from the President’s Office to buy H1345 to settle the dispute, after she wrote to them regarding the same, given that as a returning graduate who had no land registered in her name, she was entitled to purchase a plot of state land. According to her, she solely negotiated the purchase of H1345 as Mr Pillay was not eligible to purchase state land as he already owned land. She explained that however the transfer deed is in both their names because when the Government sells land to a person, they normally put the name of the person’s partner on the deed in case the person is unable to keep up with payment for the land.
- [188] Ms Lablache explained that when the parties purchased H1345 it had a big house on it which they renovated and converted into a semi-detached house comprising two units, with each of the two units having 2 bedrooms, 1 living room and 1 kitchen. The purchase of H1345 and renovation of the house was paid for by means of a loan of SCR400,000 which was borrowed by Mr Pillay. Mr Pillay repaid the loan during the time that the original house was being renovated with no direct contributions from Ms Lablache, who was contributing to their family and household expenses so that he could make the loan repayments.
- [189] After the renovations were complete, they rented out the semi-detached house and used the rental income to continue repaying the loan and to refund Mr Pillay the money he had used to repay the loan whilst the house was being renovated. Ms Lablache testified that one of the units was rented to the Ministry of Education for a monthly rent of SCR4,500.00 for a term of one year to house its workers, and that she had made the arrangements for the same through her contacts at the Ministry where she worked at the time. After that the unit was rented out to a private individual. The other unit was rented to another private individual from the beginning for a monthly rent of SCR3,000.00. Ms Lablache’s responsibility was to look for tenants for the houses.

[190] In support Ms Lablache produced Exhibit D6 - a Lease Agreement dated 3rd November 2003, between Mr Pillay (the lessor) and “[t]he Government of Seychelles represented by Mrs MacSuzy Mondon, Principal Secretary of the Department of MINISTRY OF EDUCATION AND YOUTH” (the lessee) for the lease of “the dwelling house situated on the land comprised in Title No. H1345 ... for the terms 1 YEAR from the 30th DAY OF OCTOBER 2003 at a monthly rent of FOUR THOUSAND FIVE HUNDRED ...”. Paragraph 5 of the agreement stipulates that “[t]his Lease Agreement may be cancelled by either party provided that due prior notice is given if their respective intentions that the Lease Agreement be so cancelled and for both parties it shall be one month’s written notice”. She also produced **Exhibit D7** – letter dated 19th April 2004 from the Principal Secretary of the Ministry of Education and Youth addressed to Mr Pillay informing him that the Ministry would be terminating the lease agreement with effect from 30th April 2004.

[191] Ms Lablache stated that although she was not sure, she believes that the loan must have been quickly repaid over a couple of years in view of the rent that was being collected. She did not get any share of the rent money. She does not recall how long the properties were rented out, but recalls that after the loan had been repaid and all the tenants had left, she agreed for Mr Pillay’s mother to occupy one of the units of the semi-detached house. His mother moved in about 7 years ago i.e. 2013 and still lives there rent-free. Mrs Lablache moved into the other unit 4 years ago i.e. 2016 when she moved out of the matrimonial home. Prior to that, Mr Pillay’s sister had been occupying the unit but the Family Tribunal ordered that Ms Lablache move into the house.

[192] Ms Lablache testified that she seeks to have the property registered in her sole name and for Mr Pillay to transfer his half share to her without her having to pay any consideration for the same. The reason she gives is that she has already been allocated H1345 as a returning graduate which was transferred into the joint names of the parties, and it will be difficult for her to obtain another plot of state land. She states that H1345 is the only place she has.

[193] As to the current state of the house, she states that Mr Pillay started erecting another storey to the house which has not been completed, as the Planning Authority asked him to

stop the construction works because he did not have planning permission for the same. As a result whenever it rains, water collects on top of the house and runs down into the house below ruining the ceiling. She says that the place is a total mess because of that, and that the condition of the house is continually deteriorating. The humidity resulting from the leaks also affects the clothes in the wardrobe. There are also termites. She claims that both units of the semi-detached house are similarly affected.

[194] In cross-examination, she confirmed that construction of the 2nd storey on top of the the semi-detached house on H1345 started about 7 years ago but was never completed: the walls had been erected but no roof had been installed. The work had been done by Indian workers sought by Mr Pillay and again there had been no planning permission. Works stopped after the parties separated as Mr Pillay was not allowed to continue. Ms Lablache denies that she was the one who reported him to the Planning Authority for carrying out the construction without planning permission. She also admitted that she did not contribute towards any of the construction materials, the plumbing or wiring, or the workers' salaries.

[195] Ms Lablache further admitted that she did not personally repay the loan which was borrowed to purchase H1345 and to convert the house thereon into a semi-detached house, but stated that the loan was repaid with the money received from renting the house to tenants whom she had secured from the Ministry of Education. She further admitted that she did not personally pay for any repairs or renovations to the semi-detached house. However she paid for the soft furnishings such as curtains, cushions, pillows and also other furnishings and items necessary to rent out the house. She also recalls purchasing a fridge. Again at the time, she did not see any reason for keeping receipts.

[196] In re-examination Ms Lablache clarified that she paid for cushions, curtains, soft furnishings, a fridge and other items for both of the units comprising the semi-detached house on H1345.

[197] In re-examination she stated that she is entitled to a share of the property because she contributed by looking for tenants who paid rent which in turn repaid the loan borrowed for purchase of the land and house and renovating the house.

Titles H6465 & H6466 (subdivisions of H1343)

- [198] Ms Lablache confirmed that these two plots were purchased by the parties from the Government in 2005 for SCR100,000.00 and are still held in their joint names. They purchased the two properties (which are actually subdivisions of H1343 but which she mistakenly stated were amalgamated to form H1343) after purchasing H1345, as the only right of way to H6465 and H6466 is over H1345 which belong to the parties and H1346 registered in the name of Mr Pillay. The 2 parcels were paid for by means of a loan borrowed by Mr Pillay.
- [199] In support Ms Lablache produced Exhibit D4 – a letter dated 15th July 2003 from the Principal Secretary of the Ministry of Land Use & Habitat requesting the views of the District Administrator, English River on an application made by the parties for the purchase of H1343 for agricultural purposes. The letter mentions that H1343 is enclaved and that the only access is through parcels H1345 and H1346; and Exhibit D5 – a letter of offer for parcel H1343 dated 2nd July 2004 addressed to Mr Pillay and Ms Lablache from the Principal Secretary of the Ministry of Land Use & Habitat, informing them that *“approval in principle has been granted to offer (them) parcel H1343 ... for a consideration of R100,000/- ...”* .
- [200] Ms Lablache confirmed that H6465 & H6466 (which are subdivisions of H1343) are enclaved and that the only way to access them are through H1345 and H1346. She also confirmed that H6465 & H6466 are the parcels offered to her by Mr Pillay as a settlement in this case and which she refused because of the lack of access thereto. She stated that if she had accepted his offer, he would have remained in ownership of H1345 and she would have had no access to the properties if he chose not to grant her a right of way over H1345.
- [201] In cross-examination she accepted that H6465 & H6466 are registered in both the parties’ names and was purchased for the sum of SCR100,000.00 although she does not recall if it was paid by bank transfer or cash. She also accepted that she did not pay the transferor for the land or make any payments towards the purchase price of the property and that Mr Pillay did, although the receipt contains both their names. However she explained that

she contributed to the acquisition of the land by her contributions she made to the family generally.

[202] In re-examination Ms Lablache stated that she is not sure if payment of the SCR100,000.00 for H6465 & H6466 was done in cash or by bank transfer but she knows that the receipt is in the names of both of the parties.

Title H2307 purchased from Mr Francis Ally

[203] Ms Lablache testified that in 2012, Mr Pillay purchased the bare-ownership of this property from Mr Francis Ally who kept the usufructuary interest to the property. The rights of Mr Pillay was transferred to Inesh in 2016. Mr Pillay told her that he paid SCR350,000.00 for the property. It was paid bit by bit over a period of time, whenever Mr Ally would ask him for some money. She recalls Mr Pillay paying him SCR35,000.00 once. Ms Lablache also lent Mr Pillay money to pay Mr Ally in varying sums of SCR5000.00, SCR10,000.00 and once even SCR20,000.00. He re-funded her the money sometimes although he never returned the SCR20,000.00.

[204] Ms Lablache states that Mr Ally still occupies the house on the property, which has a living room, a kitchen and she thinks 2 bedrooms. The house has not been renovated since Mr Pillay purchased it. Ms Lablache believes that she is entitled to a half share of the property because she contributed to pay for it.

[205] In cross-examination she reiterated that payment was made to Mr Ally in bits and pieces sometimes in sums of SCR3,000.00, SCR5,000.00 or SCR7,000 and at other times by giving him things such as a television or a radio. Mr Pillay made the payments until the sum of SCR350,000.00 was completely paid off, and often borrowed sums of SCR3,000.00 or SCR5,000.00 from Ms Lablache for the same. Ms Lablache admitted that she had no documentary evidence that she lent the money to Mr Pillay but explained that family members lend money to each other when needed. It was put to her that Mr Pillay would not need to borrow such sums from her as he has always been a successful electrician, and furthermore she had admitted that even before the Covid pandemic her business was not doing well, and that she does not have any savings, so she could not expect anyone to believe that she had paid SCR350,000.00 to Mr Ally. She replied that

she has substantial savings in the form of raw materials in a store covered with cobwebs, where she had to keep them when Mr Pillay disconnected the water and electricity supply to the studio. It was suggested that she auction off the materials to which she replied that she was hopeful that she could still be able to use them.

[206] She was asked why she is claiming half of H2307 given that it is in Inesh's name. She replied that Mr Pillay has disposed of all the properties registered in his name in a similar manner and that this was purposely done out of bad faith. She pointed out that in any case, when she dies their children will inherit all the properties they are fighting about. As to there being no guarantee of that happening because she is divorced and living with a very young man, she stated that she is not married to him and that she has nothing against her children.

[207] It was further put to her that she has sufficient means to make a living without being awarded any share in Mr Pillay's properties. Furthermore she has a shop, is a business woman and Covid is not going to last much longer. She stated that she is only seeking to have her share of the property that she contributed to acquire during her marriage. Furthermore she does need help to be able to start afresh. She denied that she was only trying to extract property and money from Mr Pillay and the children.

[208] In re-examination, Ms Lablache stated that the parties were together almost 36 years and that they had a relationship where they trusted each other and did not feel the need to keep invoices or receipts for payment of household expenses, utilities, workers or money lent to each other (including for payment to Mr Francis Ally). This is because they were a family and any money spent was for the betterment of that family, and this is also the reason that she does not have any documentary proof of financial contributions she made to the family. She also pointed out that they both cared for the children.

Title V1332

[209] Ms Lablache testified that her first daughter Barbara found out that V1332 was for sale and suggested that she purchase it to run a business. Initially she was reluctant because she was still teaching at the time but finally agreed, and Barbara proceeded to enquire about the property from the owners Jenny and Octave Tirant. Ms Lablache then went to

see Mr Tirant as he is related to her mother, and begged him to sell her the property to operate her fashion house as she needed a place for the same. Mr Pillay only entered into the discussions with Mr Tirant after that, following which the parties purchased the property. Ms Lablache stated that the Tirants sold the property to the parties for her to run her business. She testified that Mr Tirant agreed to sell the property to her, although it was Mr Pillay who paid for the property which was transferred to and registered solely in his name.

[210] Ms Lablache stated that in January 2016, upon her request, Mr Tirant swore an affidavit (admitted as Item 3 and later produced by Mr Tirant as Exhibit D23) because Mr Pillay was claiming that he was the sole person responsible for obtaining the property whereas it was she and her daughter who had approached Mr Tirant for the same. In the affidavit Mr Tirant averred that *“the purpose of selling the property was to assist Paquerette Lablache, Pillay to expand her business”*.

[211] The property was purchased for a sum of SCR300,000.00 as shown by Exhibit P6 (transfer document for V1332 dated 22nd February 2006). It was paid for by means of a loan of SCR600,000.00 which Ms Lablache had co-borrowed together with Mr Pillay from MCB in February 2006 as shown by Exhibit P6(e). Ms Lablache confirmed that as per Exhibit P6(e) the loan was secured by a 1st line mortgage on property H1345 which is co-owned by the parties and currently occupied by her, as well as other securities. The charge on H1345 as security for the loan helped in obtaining the loan. She stated that she assisted in the acquisition of the property by negotiating with Mr Tirant for its sale, by co-borrowing the loan to fund the purchase thereof and providing security for the loan by charging H1345 of which she is a co-owner.

[212] Ms Lablache stated that when V1332 was purchased, there was a two storey building on the property which Mr Pillay renovated and later extended but did not demolish and rebuild as he claims. The renovation of the building was funded by the remainder of the loan of SCR600,000.00 after the payment of SCR300,000.00 to Mr Tirant for the purchase of the property.

[213] When renovation of the original building was completed in 2009, Ms Lablache moved into it. She was the first tenant and rented the place for about 2 years from October 2009 to April 2011 where she operated her fashion house – Mangouya House. She denied Mr Pillay’s testimony that her business did not make any money and that he had to evict her because she could not pay the rent. According to her, the reason she moved out was because her brother wanted to rent the premises at a higher rent and it made business sense for her to move out and get a smaller place in town, so that they could obtain a higher rent and pay off their debts. She maintained that there was never any question of her being evicted.

[214] She stated that because she moved into the building in late October 2009 she only started to pay rent in November of that year in the sum of SCR4,000.00 and thereafter in varying sums every month, up to the time she left. She recorded her monthly rent payments to Mr Pillay in a ledger. The rent she paid was used to continue repayment of the SCR600,000.00 loan used for the purchase V1332 and the renovation and extension of the building on the property. The amount of rent she paid each month depended on how much income her business made and ranged between SCR4,000.00 to SCR7,000.00 per month. She produced as Exhibit D18 - extracts from the ledger showing the rent paid for the premises from December 2009 to December 2010 which are highlighted by the Court for ease of reference. The payments are as follows:

- December 2009 SCR6000.00
- January 2010 SCR4,000.00
- February 2010 SCR5,000.00
- March 2010 SCR7,000.00
- April 2010 SCR7,000.00
- May 2010 SCR4,000.00
- June 2010 SCR4,000.00
- July 2010 SCR6,000.00
- August 2010 SCR4,000.00
- September 2010 SCR4,000.00
- October 2010 SCR5,000.00

- November 2010 SCR4,000.00
- December 2010 SCR5,000.00

[215] After the original building was renovated, Mr Pillay extended the building on one side. The extension consisted of two storeys (upstairs and downstairs). It was quite substantial and encroached on two plots of Government owned land which Mr Pillay leased for an annual rent of SCR1,000.00. The extension was rented out to IOT for 3 or 4 years for their workers to live in. IOT used to pay rent of around SCR45,000.00 per month and moved out because Mr Pillay was trying to increase the rent. When IOT stopped renting the extension, no renovations were done although the walls may have been repainted and some cleaning done, and ACM Associates moved in shortly after and is still currently renting the place at a monthly rent of SCR70,000.00. In 2012 RPM Autoparts started renting the part of the building which Ms Lablache vacated in 2011 which it is still occupying to date. RPM pays a rental of SCR32,000.00 per month. Ms Lablache states that the loan of SCR600,000.00 must have been repaid by now given the amount of rent Mr Pillay is collecting for the building.

[216] She states that at first RPM Autoparts paid their rent by cheque to Iouanna who was handling that part of Mr Pillay's business. She cashed the cheques and gave the money to Mr Pillay which he used to make the loan repayments as initially the loan repayments were not being deducted from Mr Pillay's account.

[217] Ms Lablache claims that the only share of the rent that she received was the SCR5,000.00 which Mr Pillay gave her every month for about 9 months to pay for her truck which she purchased in 2015. However he stopped giving her the money when the parties separated in 2016, and has been pocketing all the rental money up until now.

[218] She stated that V1332 was transferred to their children in 2016 when the parties were in the divorce process, but that Mr Pillay kept the usufructuary interest to himself. She denies threatening to throw her children out on the street if their father died before her, and stated that Mr Pillay did not transfer the properties to them to protect them but to prevent her from getting a share of the same, and would transfer the properties back to himself after the conclusion of the divorce and matrimonial property proceedings. She

stated that he had tricked the children into believing that if he died they would be out on the streets, whereas under succession laws she would have been entitled to half and they would have been entitled to the other half of his properties. Furthermore he could have provided for them by will if he had been concerned about their welfare in the event of his death.

[219] She believes that she is entitled to a share of the property and that a half share would be a fair share for her to be given. She confirmed that in her petition, in the alternative to her other demands, she is seeking for V1332 and the building thereon to be awarded to her. She stated that if she is awarded the property, she would not be seeking any further awards from the Court as this would be sufficient for her. She reiterated that at the age of 59 it will be difficult for her to start afresh after all the contributions she has made during the 36 years that the parties and their children have lived together as a family.

[220] In cross-examination it was put to Ms Lablache that apart from approaching Mr Tirant (who is her mother's cousin) for the purchase of the land V1332 and paying rent for the building thereon for 2 years as per Exhibit D18, she did not repay the loan of SCR600,000.00 which Mr Pillay has brought evidence he was paying by directly debiting his account each month (Exhibit P6(e)). She replied that as a co-borrower she guaranteed the loan which they had taken together (he as the borrower and she as the co-borrower), and furthermore all the money she paid as rent was used to repay the loan. The loan was further secured by a charge on property co-owned by the both of them. It was pointed out to her that she was using the premises as Mangouya Studio in return for the rent which as per the parties' arrangement, she only paid the amount that she could, and the only other contributions she made were those she made as Mr Pillay's wife and a member of the family. Ms Lablache pointed out that out of the SCR600,000.00 only SCR300,000.00 was used to pay for the purchase price of the property and the other SCR300,000.00 was used to upgrade the building, and that Mr Pillay had brought no evidence to support his claim that he spent more than SCR300,000.00 to renovate and extend the building. Ms Lablache also admitted that apart from the aforementioned contributions, she never directly paid the bank or any contractor for the extension of the building.

[221] In re-examination, in regards to the properties she seeks to be awarded to her, Ms Lablache reiterated that even if the houses where the parties currently live at Majoie are in close proximity, if they both stick to their respective properties, mind their own business and do not come looking for trouble from each other, there is no reason why they cannot continue living next to each other. Furthermore they can seek a restraining order if either one of them causes any problems. However given the situation between the parties, it might be more prudent to award her V1332 so that they would be far away from each other.

Title V9192 & V9193

[222] Ms Lablache confirmed that Mr Pillay owns the bare-ownership in title V9192 and V9193 which was transferred to him in 2008 after the marriage of the parties by his father who holds the usufructuary interest therein. She also confirmed that although Mr Pillay had originally testified that he had not paid anything for these properties according to the transfer document he paid a consideration of SCR150,000.00. She stated that there are 3 dwelling houses on the parcels, one of which Mr Pillay's father occupies and the other 2 which he rents out. Ms Lablache stated that she is claiming a share in the value of the properties as they form part of the matrimonial pool but is not seeking to be awarded any of the two properties themselves.

[223] In cross-examination Ms Lablache accepted that Mr Pillay's father occupies one of the three houses on V9192 & V9193 and rents out the other two, and that the rent goes to him and not to Mr Pillay. Ms Lablache further accepted that she did not pay for the land or contribute towards such payment.

[224] In re-examination Ms Lablache confirmed that there are only two houses on Mr Pillay's father's property, one of which he is occupying and the other which he is renting. The third house burnt down some time back. Although she does not know for sure she believes his father benefits from the rental of the house.

Testimony of Octave Tirant

[225] Mr Tirant testified that he has known Ms Lablache who is related to him since their childhood, and he knew Mr Pillay well before he and his wife Jenny Tirant transferred

Title V1332 to him. He agreed with counsel for Ms Lablache that the proximity of the property to Victoria makes it a valuable property.

[226] Mr Tirant recounted that towards the end of 2005, Mr Pillay approached him and expressed an interest in purchasing the property. He consulted with his wife who was not in favour of selling the property, and refused to sell it despite Mr Pillay's insistence. In 2006 Ms Lablache approached him and begged him to sell her the property as they were family. She said that she really needed a place to run her business, and that the location of the property was ideal for that as it was near the town centre. After he had further consulted with his wife, either Mr Pillay or Ms Lablache got back to him and he agreed to sell the property and asked them to make an offer. Ms Lablache told him the business was still in its initial stages, that she was trying to start it up and therefore they did not have much money. He therefore proposed a starting price of SCR400,000.00. In January Ms Lablache got back to him and again relying on their family ties, implored him to reconsider the price as she only had SCR300,000.00, which he and his wife accepted.

[227] Mr Tirant stated that he sold the property for the sum of SCR300,000.00 because of the close family ties and friendship with Ms Lablache, and he wanted to see her business progress. He stated that he would not even have considered selling the land if it had been someone to whom he was not related or did not know.

[228] He confirmed that in 2016 he had sworn an affidavit at the request of Ms Lablache who told him that she was encountering problems with Mr Pillay and would like him to confirm that he had sold V1332 as a favour to her. He swore the affidavit because he had sold the land because of his personal ties to Ms Lablache, and he confirmed that the contents of the affidavit were the truth. He produced the affidavit sworn by him on 25th January 2016 before Notary Melchior A. Vidot as Exhibit D23 to which is attached transfer deed dated 22nd February 2006 of Title No V1332 from Octave Tirant and Jenny Tirant to Walter Pillay. In the affidavit he avers:

1. *That my wife, Jenny Tirant, and I owned a parcel of land situate at English River, Mahe, more formally known as V1332.*

2. *That we sold V1332 to Mr Walter Pillay on the 22nd February 2006 for the sum of SCR 300,000 (Three Hundred thousand Seychelles Rupees).*
3. *That Paquerette Lablache Pillay, a member of my extended family, wanted to renovate building on the property in which to run her fashion design company and approached me to sell the property to her.*
4. *That the sole reason for selling the property to Mr Walter Pillay is due to the fact that he is married to Paquerette Lablache Pillay, who is a member of my family and I wanted to help her.*
5. *That the purpose of selling the property was to assist Paquerette Lablache, Pillay to expand her business.*

[229] He confirmed that the transfer deed was signed by both he and his wife before Notary Pardiwalla who read it out to them prior to them signing it which is when he noticed that the land was transferred only to Mr Pillay and not to both parties. After they had signed the document he informed Ms Lablache of the same to which she replied that it was not a problem as they are husband and wife.

[230] In cross-examination, Mr Tirant confirmed that Ms Lablache was related to him. He stated that when they were children, almost every week-end Ms Lablache and her family would come to his parents' place at Anse Boileau, and during the school holidays he would go to their place at St. Louis. When she married Mr Pillay they remained friends but did not see each other regularly as when they were children.

[231] Mr Tirant does not recall the date that Mr Pillay first came to see him regarding the property but states that he came alone. Mr Pillay told him that he had been informed that the property which had an abandoned house thereon belonged to him and enquired whether he wanted to sell it. Mr Tirant agreed with counsel for Mr Pillay that there was a building on the property which was not in a good condition and needed repairs and maintenance. He further confirmed that he had not been using the property. He denied that Mr Pillay had asked to rent the property and stated that he could not rent the house in the condition that it was in at the time. It was put to him that when Mr Pillay first came to

see him there were no discussions about buying the property, but that he had requested to rent the property and repair the building thereon so that he could use it. Mr Tirant replied that this might be the case but he could not recall. However he vehemently denied telling Mr Pillay that he was not interested in renting out the property but was willing to sell it to him, because he had never intended to sell the property but had wanted to demolish the building thereon and construct a new one because of its prime location near Victoria. He had never considered selling the property until Ms Lablache asked him to. He also denied lying to the Court and making up a story about Ms Lablache asking him to sell her the property to help her out as she needed a place close to town.

[232] He agreed that he had signed Exhibit D6 - the transfer deed for V1332 to Mr Pillay - before Notary Pardiwalla, and that Mr Pillay had paid him the money in consideration for the transfer which is why Mr Pillay's name is on the transfer deed. He also confirmed that the building on the property needed maintenance at the time of the sale. After the sale, he noticed that works had been carried out on the property and improvements made thereto.

[233] In re-examination Mr Tirant stated that he did not know whether the renovations had been carried out solely by Mr Pillay or Ms Lablache or by both of them. Mr Tirant also denied that he had lied to the Court and stated that everything he had stated was the truth. He further denied that Mr Pillay had asked him to rent the property and reiterated that the property was not in a state for it to be rented out either to do business or to live in. Finally he stated that the SCR300,000.00 in consideration for the transfer was paid to him by cheque.

Testimony of Cherly Dubel

[234] Cherly Dubel is a legal specialist working with the Mauritius Commercial Bank (Seychelles) Limited since three years. Her duties entail the preparation of legal documents and dealing with legal disputes.

[235] She produced Exhibit D24 - a Loan Agreement dated 22nd February 2011 between "*THE MAURITIUS COMMERCIAL BANK (SEYCHELLES) LIMITED*" and "*Mrs Paquerette LABLACHE-PILLAY...*" the latter being the Borrower, in terms of which the bank "*places*

at the disposal of the Borrower the sum of Seychelles Rupees Two Hundred and Fifty Thousand Only (SCR250,000.00) ...". The purpose of the loan is stated as "Purchase of brand new vehicle" and the terms of the loan repayment is "by 60 monthly instalments of SCR5,435.61 on the 30th day of each month with effect from March '11 until the loan is fully repaid". One of the securities for the loan is "3rd Line Mortgage on Parcel H1345 for SCR250,000.00".

[236] She also produced Exhibit D25 – a Charge on Title No. H1345 dated 6th April 2011 in terms of which Mr Walter Patrick Pillay and Paquerette Lablache acting as fiduciaries of the said title charge their interest therein to secure the payment by Ms Paquerette Lablache ("the Borrower") to "*THE MAURITIUS COMMERCIAL BANK (SEYCHELLES) LIMITED*" of the principal sum of Seychelles Rupees Two Hundred and Fifty Thousand with interest. The charge is signed by both parties in their capacity as the chargors and by representatives of the bank. Ms Dubel stated that both Mr Pillay and Ms Lablache signed the charge despite only the latter having borrowed the loan because they were both fiduciaries of H1345.

[237] Ms Dubel could not confirm who repaid the loan but stated that all payments were made through account number 00715872500 as per the loan agreement. She added that this account number has now changed to 194042 because the bank has changed to a different core banking system since 2014. She confirmed that account number 00715872500 which is now 194042 was previously in the sole name of Mrs Lusita Paquerette Lablache Pillay and is now in the sole name of Ms Lusita Paquerette Lablache. She also confirmed that the loan was repaid in monthly instalments of SCR5,433.93 from 2014 to 2016. She explained that there could be a slight change in the amount of the loan repayments each year depending on the base interest rate of the bank for each year.

[238] In support she produced Exhibit D26 – Bank Statement for Current Account No. 194042 in the name of Ms Lusita P. Lablache for the period 11th January 2014 to 1st April 2016 showing loan repayments in the sum of SCR5433.93 for the months of January to October 2014 and SCR5496.56 for the months November to February 2016.

[239] Ms Dubel explained that although the loan was borrowed in 2011, she was only able to retrieve records from 2014 when the bank changed to the current core banking system. Statements prior to 2014 under the previous core banking system are not readily available but can be provided upon request. However she confirmed that the loan to which Exhibit D26 relates is the same loan taken in 2011 and to which Exhibit D24 relates. She stated that according to Exhibit D26 the final repayment on the loan was made on 29th February 2016. Ms Dubel stated that Exhibit D26 shows that the loan was repaid by both cash deposits and cheques credited to the account, but was not able to state who made these deposits.

[240] In cross-examination, Ms Dubel basically confirmed the matters she deponed to in examination-in-chief. However she could not confirm whether Ms Lablache had taken any other loans from that bank and stated that she only retrieved records for the loan that she was summoned to produce. She also stated that when a loan is disbursed by the bank for the purpose of construction, whether the bank will supervise the construction depends on the terms of the loan. It is done for certain constructions and on a case by case basis.

Testimony of Nigel Stanley Valentin

[241] Mr Nigel Stanley Valentin (BSc Hons QS & Comm Man, BTECH HND in BS) is a licensed quantity surveyor who has been practicing for the past twelve years. He has given evidence in court cases numerous times which has been accepted by the Seychelles courts. He testified that in 2019 he carried out valuations of a number of properties in relation to the matrimonial property case between the parties. He did some research in regards to the properties followed by viewing of the said properties for which both parties cooperated fully. At the viewings he took measurements where possible, as well as pictures, and collected other evidence which he used to carry out his valuation.

[242] The valuation method for land is done by reference to other land sold which is similar to and either in the same area or a similar location as the land being valued, from which the rate for calculating the value of the land is obtained. Factors taken into consideration include the location of and access to the property, as well as what kind of view it has. In regards to buildings, if drawings are available they are used for valuation of the building.

If not, an elemental analysis is done whereby the construction or building cost of the building is broken down, and the estimated cost of the building per metre square is obtained. The value of the property is then appreciated or depreciated depending on the condition of the land.

[243] Mr Valentin produced valuation reports all dated 28th June 2019, in regards to the following properties specified at (a) to (g) below. Each valuation comprises (1) a covering letter setting out *inter alia* the value of the property; (2) relevant details pertaining to the property and the valuation (including purpose and basis of the valuation, matters excluded from the valuation, description of the property inclusive of land and developmental works); (3) pictorial evidence; and (4) a quantitative analysis of both the land (basic value to which valuable factors are added and devaluable factors deducted) and developmental works thereon (value to which depreciation is applied) pursuant to which the current market value of the land and the developmental works is obtained and added together to obtain the current market value of the whole property. The valuation reports are reproduced below in relevant part:

(a) Exhibit P27 – “**VALUATION OF PROPERTY LAND PARCEL PLOT No. H6638 (161 m²). AT MAJOIE. ANSE ETOILE, MAHE, SEYCHELLES**”

[...]

*I hereby certify that in my opinion, the detailed evaluation and thorough analysis of the data collected during the site visit made on Tuesday 25th June 2019, and land survey documents conclude that the Current Market Value of the Property is valued to be at a sum of **One Hundred and Two Thousand Five Hundred and Fifty-Seven Seychelles Rupees only (SR102,557.00).***

[...]

1. Purpose of the Valuation

The purpose of the valuation of the property is to establish the Current Market Value of the land and any developmental work performed by the date of the conducted site visit for litigation and shares apportion purposes.

2. Basis of the Valuation

The analysis of the evaluated elements considered in this evaluation is based on,
2.1. *Land Survey GIS plan of Parcel No. H6638.*

2.2. *Site visit dated Tuesday 25th June 2019, where the site was identified, and all factual evidence visibly present on the property was collected and has been considered in the valuation.*

2.2. *Comparative Market trend in relation to property value.*

3. **PROPERTY DESCRIPTION**

- a) **Parcel reference**, *The property is known as Parcel No. H6638 of 161m² of freehold property at the upper Ma Joie sub-district in the Anse Etoile electoral district on Mahe, Seychelles.*
- b) **Location**, *The property is located at approximately 5m from the right-hand side of the driveway when going uphill; it is within the proximity of Greater Victoria.*
- c) **Boundary**, *The property is boundary to a right-of-way reserve alongside its northeastern boundary line, to another property (H2307) which is owned by the same owners and private properties on the other boundary line.*
- d) **Ground condition**; *The property is of a triangular shape sloppy ground surface, with a topographical level of around 75m to 80m (within a horizontal span of approximately 11m) above datum level, and with combined organic, and red earth type soil.*
- e) **Access**; *The property is a boundary to an approximately 4m right-of-way reserves, however being at a lower level than the property the motorable access reserves are not beneficial to the property, therefore currently the property is being accessed through H2307 (which is also owned by the same owners).*
- f) **View**; *Its topographical level permits the availability of a significant coastal view in the north-eastern direction.*
- g) **Peace**; *The property is located within a privately developed area, nearer the end of the access road, and together with low traffic frequency permits a very quiet and peaceful atmosphere.*
- h) **Plants**; *Even though the property is still covered with greeneries, no plants of significant value were identified.*
- i) **Risk**; *The property is not exposed to any environmental risk.*
- j) **Services**, *The area is connected to all main public utilities and IT services.*
- k) **Used ground surface**, *The property is currently unbuilt, however it is foreseeable that due to its size, it may encounter planning difficulties approval of any structural development.*

[244] In regards to the difference between his evaluation of SCR102,557.00 and that of Mr Dereck Accouche of SCR130,088.00 (Exhibit D17) for parcel H6638, Mr Valentin stated that the value of land depends principally on the quantity and the rate used to calculate such value, and that other factors such as depreciation are of minimal effect. He observed

that in both valuations the quantity is the same and therefore the difference is caused by the rates used. He justified the lower rates he had used by the fact that H6638 being only 161 m² cannot be built on as its usable capacity is minimal. He explained that planning permission will not be granted for construction on a parcel unless there is a certain distance from the boundary and the soakaway, and for that reason because of its size H6638 cannot be built on and can only be used for planting. A plot of that size could only be built on in the town area or if the parcel is connected to a central sewage system in future. He stated that Mr Accouche has possibly not considered this hence his higher valuation of H6638, and further stated that Mr Accouche would have to justify the rates he had used himself.

[245] Mr Valentin further explained that different quantity surveyors operate differently and he does not expect another quantity surveyors valuation to be the same as his. He explained that quantity surveyors use three values when valuing land: the market value, the selling value that someone who wants to buy a plot of land is prepared to pay which is a high value, and the forced sale value that the banks use. He considers as acceptable any difference between his valuation of a parcel and a valuation made by another quantity surveyor which is around a margin of 15% higher or lower than the market value as determined by him.

(b) Exhibit P28 – “**VALUATION OF PROPERTY LAND PARCEL PLOT No. H2307 (550m²) AND ALL BUILT STRUCTURES AT MAJOIE, ANSE ETOILE. MAHE SEYCHELLES**”

[...]

*I hereby certify that in my opinion, the detailed evaluation and thorough analysis of the data collected during the site visit made on Tuesday 25th June 2019, and land survey documents conclude that the Current Market Value of the Property is valued to be at a sum of **One Million Forty-Two Thousand Two Hundred and Thirteen Seychelles Rupees only (SR1.042.213.00).***

[...]

1. Purpose of the Valuation

The purpose of the valuation of the property is to establish the Current Market Value Of the land and any developmental work performed by the date of the conducted site visit for litigation and shares apportion purposes.

2. Basis of the Valuation

The analysis of the valuated elements considered in this evaluation is based on,

- 2.1. Land Survey GIS plan of Parcel No. H2307.*
- 2.2. Site visit dated Tuesday 25th June 2019, where the site was identified, and all factual evidence visibly present on the property was collected and has been considered in the valuation.*
- 2.3. Comparative Market trend in relation to property value and developmental cost.*

Exclusion

- 2.4. All movable furnishing, equipment, and appliances.*

3. PROPERTY DESCRIPTION

3.1. LAND

- a) **Parcel reference**, the property is known as Parcel No. H2307 of 550m² of freehold property at the upper Ma Joie sub-district in the Anse Etoile electoral district on, Mahe, Seychelles.*
- b) **Location**, The property is located on the right-hand side of the driveway from the eastern point to the north-western point when going uphill, it is within the proximity of Greater Victoria,*
- c) **Boundary**, The property is boundary to the road access at most of the boundary lines, and to another property (H6638) which is owned by the same owners alongside the northeastern boundary line.*
- d) **Ground condition**; The property is of an irregular shape, of mostly made flat ground surface, with a topographical level of around 80m above datum level, and with combined organic, and red earth type soil.*
- e) **Access**; Even though the property is a boundary to the access road due to the way that development has been performed there is no direct driveway access and parking space onto the property the motorable.*
- f) **View**; its topographical level permits the availability of significant coastal views towards the northeastern direction.*
- g) **Peace**, Even though the property is boundary to the access road, being within a privately developed area, nearer the end of the access road, permits a very quiet and peaceful atmosphere.*

- h) **Plants;** *Other than a significant amount of flowering plants were identified, no plants of significant value were identified.*
- i) **Risk;** *the property is not exposed to any environmental risk.*
- j) **Services,** *The area is connected to all main public utilities and IT services.*
- k) **Used ground surface,** *the property is currently accommodating a dwelling house of approximately 98m².*

3.2 DEVELOPMENTAL WORKS

3.2.1 Dwelling house

Blockwork dwelling house, of approximately 98m², with internal partitioning to accommodate two bedrooms, open plan sitting and dining area, toilet, bathroom, kitchen, and open veranda.

The building structure is of reinforced concrete and blockwork substructure, painted blockwork walling, corrugated iron sheet roofing, painted ceiling soffits in common areas, wooden frame and glass panel windows, all doors of wooden type, and with basic require electrical and sanitary services.

It is apparent that the house even though it is currently occupied, it is of age and badly maintained, and some structural deficiencies were identified.

3.2.2 Other Developmental works

- i. Paving work,** *concrete paving work with embedded breaking tiles finish at front of dwelling house.*
- ii. Retaining wall,** *rockwork walling alongside the eastern and part of the northeastern boundary*
- iii. Boundary wall,** *rockwork walling, and columns onto the retaining wall and decorative wall.*

[246] As to the difference between Mr Accouche's valuation of SCR410,233.97 (Exhibit D18) as opposed to his own higher valuation of SCR1,042,213.00 of H2307, Mr Valentin stated that the difference arises firstly from the low value given to the land by Mr Accouche. He pointed out that the rate used by Mr Accouche for H2307 which is buildable land is 142.56 per m² compared to the rate he used for H6638 (i.e. 808 per m²) which is located in the same area but is not buildable land. Furthermore H2307 has a boundary which borders the road whereas there is no access to H6638 from the road. He stated that Mr Accouche has provided no valid reason for the big difference in the rates per m² used for valuation of the two plots, and stands by his own valuation as his rates for

H2307 and H6638 are more or less the same and more realistic. As for the value of the buildings on H2307 there is only a slight difference between the two valuations of the houses prior to depreciation: whereas Mr Accouche's valuation amounts to SCR940,765.63, Mr Valentin's amounts to SCR928,673.00 which he states is acceptable because it falls within the 15% margin. However Mr Valentin also pointed out that in regards to the buildings whereas he took into account the concrete paving, retaining wall and boundary wall in his valuation, Mr Accouche did not consider any infrastructures other than the house. For these reasons he stands by his valuation of H2307 and the structures thereon.

[247] As to Mr Accouche's testimony that the house on H2307 devalued the property, Mr Valentin stated that in his valuation he had also devalued the land because of the presence of the building. He explained that the devaluation is calculated by estimating how much it would cost to demolish the building and reinstate the land back to its previous condition, which he called rebuilding condition. He explained that the issue with Mr Accouche's valuation is that he has devalued the land using the base rate of 142.56 for which as explained previously, there is no justification given the rate of 808 m² for H6638.

[248] Mr Valentin also stated that unlike Mr Accouche he did not take into account the fact that the person living in the house on H2307 had a usufructuary interest on the property because according to him, this has no impact on the value of the property.

(c) Exhibit D29 – **“VALUATION OF PROPERTY LAND PARCEL PLOT No. 6465 (1162m²) & H6466 (107m²), AT MA JOIE, ANSE ETOILE, MAHE, SEYCHELLES”**

[...]

*I hereby certify that in my opinion, the detailed evaluation and thorough analysis of the data collected during the site visit made on Tuesday 25th June 2019, and land survey documents conclude that the Current Market Value of the Property is valued to be at a sum of **Seven Hundred and Nine Thousand Three Hundred and Seventy-One Seychelles Rupees only (SR709,371.00).***

1. Purpose Of the Valuation

The purpose of valuation of the property is to establish the Current Market Value of the land and any developmental work performed by the date of the conducted site visit for litigation and shares apportion purposes.

2. Basis Of the Valuation

The analysis of the valuated elements considered in this evaluation is based on,

2.1 Land Survey GIS plan of Parcel No. 1-16465 & H6466

2.2 Site visit dated Tuesday 25th June 2019, where the site was identified, and all factual evidence visibly present on the property was collected and has been considered in the valuation.

2.3 Comparative Market trend in relation to property value.

3. PROPERTY DESCRIPTION

- a) **Parcel reference**, the properties are known as Parcel No. H6465 of 1162m² and H6466 of 107m², of freehold properties at the upper Ma Joie sub-district in the Anse Etoile electoral district on, Mahe, Seychelles.*
- b) **Location**, The properties are located at approximately 43m from the right-hand side of the driveway, even though they are within the proximity of Greater Victoria, they are the most westerly properties.*
- c) **Boundary**, the properties are boundary to other private (other than H1345 which is owned by the same owners) properties at all boundary lines.*
- d) **Ground condition**; The properties are of a trapezoidal shape (when amalgamated), of combined flat (approximately 280m²) sloppy ground surface, with some rocky ground surface, with a topographical level of around 92m 1105m above datum level, and with combine organic, and red earth type soil.*
- e) **Access**; There is currently no motorable access to the properties, they are connected to the motorable access road through H1345, therefore currently the properties can only be accessed by means of a foot path.*
- f) **View**; Its topographical terrain permits the availability of a significant coastal view towards the north-eastern direction once the heavy overgrowth has been removed*
- g) **Peace**, the properties are located away from motorable roads and with no direct neighbors in its vicinity, which permits a very quiet and peaceful atmosphere.*
- h) **Plants**; Even though the properties are still in its near virgin state and heavily covered with vegetation, no plants of significant value were identified*
- i) **Risk**; the properties are not exposed to any environmental risk.*

- j) *Services, The area is connected to all main public utilities and IT services*
- k) *Used ground surface, the presence of a corrugated iron sheet was identified, however, due to its current condition, the properties is currently as totally unbuilt.*

[249] Mr Valentin confirmed that H6465 and H6466 are both vacant and stated that although there is an old structure on the property, it was not considered in the valuation. He also recalled that there was no access to the properties and that although the land was a bit sloping there was a flat part at the top from which there is a good view.

[250] He noted that there was a difference between his valuation of SCR709,371.00 and that of Mr Accouche's of SCR564,518.00 (Exhibit P19) but stated that although the latter was on the lower side this fell within the acceptable 15% margin. He observed that Mr Accouche had used different rates for the two plots of land that are next to each other – 455.09 for H6465 and 336.66 for H6466 – and stated that this may be due to topographical features specific to each plot. He then went on to explain that it was normal to have a lower rate for H6466 which is a much smaller plot and cannot be developed on its own but has to be developed together with H6465, whereas H6465 can be developed on its own. Although he stands by his own valuation he reiterated that Mr Accouche's valuation was within the acceptable margin and therefore acceptable.

[251] Mr Valentin agreed with Mr Accouche's finding that *“while considering the topography and rock features on parcels H1345 and H6466, it will be costly to build a motorable access”* (See “Brief property description” at pg 2 of Exhibit P19), and pointed out that he had considered this in his own valuation. Mr Valentin further stated that going up to the property there is an embankment (*“la terrasse”*) on which there are rock and boulders which will make building an access road costly. In his own quantitative analysis (Exhibit D29, pg 4, para 4A) he had devalued the properties because of *“Ground condition (sloppy and presence of rock)”* by SCR123,727.50 which he explained was a *“high devaluation”*.

(d) Exhibit D30 – **“VALUATION OF PROPERTY LAND PARCEL PLOT No. H1345 (737m²), AND ALL BUILT STRUCTURES AT MAJOIE. ANSE ETOILE, MAHE SEYCHELLES”**

[...]

I hereby certify that in my opinion, the detailed evaluation and thorough analysis of the data collected during the site visit made on Tuesday 25th June 2019, and land survey documents conclude that the Current Market Value of the Property is valued to be at a sum of **Three Million Six Hundred and Fifty-Eight Thousand Nine Hundred and Sixty-seven Seychelles Rupees only (SR3,658,967.00).**

1. Purpose of the Valuation

The purpose of the valuation of the property is to establish the Current Market Value of the land and any developmental work performed by the date of the conducted site visit for litigation and shares apportion purposes.

2. Basis of the Valuation

The analysis of the evaluated elements considered in this evaluation is based on,

2.1 Land Survey GIS plan of Parcel No. H1345.

2.2 Site visit dated Tuesday 25th June 2019, where the site was identified, and all factual evidence visibly present on the property was collected and has been considered in the valuation.

2.3 Comparative Market trend in relation to property value and developmental cost.

Exclusion

2.4 All movable furnishing, equipment, and appliances.

3. PROPERTY DESCRIPTION

3.1 LAND

a) **Parcel reference**, The property is known as Parcel No. H 1345 of 737m² of freehold property at upper Ma joie sub-district in the Anse Etoile electoral district on, Mahe, Seychelles.

b) **Location**, The property is located on the right-hand side (at the end) of the driveway when coming past the Guy Morel Institute, and it is within the proximity of Greater Victoria.

c) **Boundary**, The property is boundary to the driveway access alongside its southern boundary line, to another property (H6466) which is owned by the same owners alongside the northeastern boundary line, and to other privately owned properties at other boundary lines.

d) **Ground condition**; The property is of a trapezoidal shape, of mostly made flat ground surface, with a topographical level of around 90m above datum level, and with combined organic, and red earth type soil.

- e) **Access;** Even though the property is boundary to the access road due to being at a higher topographical level no direct driveway access is available and parking space is provided onto the boundary line at the end of the driveway.
- f) **View;** Its topographical level and having no obstruction on its north-eastern boundary permit the availability of significant coastal view/sea towards the north-eastern direction.
- g) **Peace;** the property is located at the end of the driveway, it is therefore in a very private area, which permits a very quiet and peaceful atmosphere.
- h) **Plants;** other than some flowering plants, no plants of significant value were identified.
- i) **Risk;** the property is not exposed to any environmental risk.
- j) **Services,** The area is connected to all main public utilities and IT services.
- k) Used ground surface, the property is currently accommodating a dwelling house of approximately 183m².

3.2 DEVELOPMENTAL WORK

3.2.1 Dwelling house

Two-story blockwork dwelling house, of approximately 366m² total floor area, with the ground floor of approximately 183m² accommodating two independent units with internal partitioning to accommodate two bedrooms, open plan sitting, dining area, and kitchen, with individual toilet and bathroom, and open veranda, and the upper floor of approximately 183m² is current non-completed with only external blockwork walls constructed .

The building structure is of reinforced concrete and blockwork substructure, painted blockwork walling at the ground floor and unplastered blockwork wall at upper floor, corrugated iron sheet roofing, painted ceiling soffits at the ground floor, aluminum frame and glass panel windows, main door from veranda of aluminum frame and glass panel sliding type, all other doors of wooden type, with ceramic tiling floor and wet wall finish and with the require electrical and sanitary services.

It is apparent that the house was undergoing vertical extension that has not been completed, and the ground floor has been subjected to the impact of age and weather.

3.2.2 Other Developmental works

- i. **Retaining wall,** combines rockwork and concrete wailing alongside the western, southern and eastern boundary.
- ii. **Boundary wall,** rockwork walling and columns onto the southern eastern boundary.

[252] Mr Valentin stated that the difference of SCR291,886.32 between Mr Accouche's total valuation of SCR3,367,080.68 and his total valuation of SCR3,658,967.00, arose mainly from the valuation of the land which he had valued at SCR744,919.25 compared to Mr Accouche's valuation of SCR620,896.00 which made for a difference of about SCR124,000.00.

[253] He expressed concerns about Mr Accouche's devaluation of the land by SCR96,600.00 because of an encumbrance in the form of a 3m wide by 46.32m long right of way amounting to approximately 140 m², on the basis that “[p]roperties with registered right of ways can deter prospective buyers” (Exhibit P20, Pg6, last item). Mr Valentin opined that on the contrary the right of way is beneficial to the property and found the devaluation applied by Mr Accouche “heavy”. He explained that the land where the right of way is located is included in determining the overall size of the land, which in term determines how much of the land can be used/developed according to the land use plan. Basically the more land you have, the more land you can use. The land comprising the right of way will therefore permit the use of the remainder of the property (which is not included in the right of way) so that most of the surface area of the property can be used. Mr Valentin further explained that if the land were to be subdivided to extract the right of way it would decrease the usable percentage and surface area of the land. Furthermore he pointed out that the right of way was located on the boundary of the property where in any case 4 meters have to be reserved for drainage and construction is not permitted within 0.5 meters. Mr Valentin stated that he himself had not considered the right of way as a depreciating factor in his valuation and that except for the devaluation of SCR96,600.00 on account of the right of way, he has no issue with Mr Accouche's valuation of the land, as without such devaluation the difference of about SCR124,000.00 (SCR744,919.25 - SCR620,896.00) between the valuations of the land would be reduced to SCR27,423.25 (SCR744,919.25 - (SCR620,896.00 + SCR96,600.00)), which is an acceptable and fair difference. As such he stood by his valuation.

(e) Exhibit D31 – **VALUATION OF PROPERTY LAND PARCEL PLOT No. H1346 (600m²), AND ALL BUILT STRUCTURES AT MA JOIE, ANSE ETOILE, MAHE, SEYCHELLES.**

[...]

*I hereby certify that in my opinion, the detailed evaluation and thorough analysis of the data collected during the site visit made on Tuesday 25th June 2019, and land survey documents conclude that the Current Market Value of the Property and the Built Structure on land Parcel H10786 is valued to be a the sum of **Six Million Four Hundred and Forty Thousand Two Hundred and Eighty-Seven Seychelles Rupees only (SR6,440,287.00).***

1. Purpose of the Valuation

The purpose of the valuation of the property is to establish the Current Market Value of the land and any developmental work performed by the date of the conducted site visit for litigation and shares apportion purposes.

2. Basis of the Valuation

The analysis of the evaluated elements considered in this evaluation is based on,

2.1 Land Survey GIS plan of Parcel No. H1346,

2.2 Site visit dated Tuesday 25th June 2019, where the site was identified, and all factual evidence visibly present on the property was collected and has been considered in the valuation.

2.3 Comparative Market trend in relation to property value and developmental cost.

Exclusion

2.4 All movable furnishing, equipment, and appliances.

3. PROPERTY DESCRIPTION

3.1 LAND

*a) **Parcel reference,** The property is known as Parcel No. H1346 of 600m² of freehold property at upper Ma joie sub district in the Anse Etoile electoral district on, Mahe, Seychelles.*

*b) **Location,** The property is located on the left-hand side (at the end) of the driveway when coming past the Guy Morel Institute, and it is within the proximity of Greater Victoria.*

- c) **Boundary**, The property is boundary to the driveway access alongside its eastern and northern boundary line, and to other owned properties at other boundary lines.
- d) **Ground condition**; The property is of a trapezoidal shape, of mostly made flat ground surface at step level, with a topographical level of around 87m above datum level, and with combine organic, and red earth type soil
- e) **Access**; Being boundary to the access road, motorable access is readily available by direct drive-in in the parking area.
- f) **View**; Its topographical level and having no obstruction on its northeastern boundary permit the availability of significant coastal view/sea towards the northern and northeastern direction.
- g) **Peace**; The property is located at the end of the driveway, with no direct neighbors, in a very private area, which permits a very quiet and peaceful atmosphere.
- h) **Plants**; Most of the ground surface has been built upon, and no plants of significant value were identified.
- i) **Risk**; The property is not exposed to any environmental risk.
- j) **Services**, The area is connected to all main public utilities and IT services.
- k) **Used ground surface**, The property is currently accommodating a dwelling house of approximately 156m², however, it is apparent that the owner has encroached onto Land parcel HI 0786.

3.2 DEVELOPMENTAL WORK

3.2.1 Dwelling house

Two storey blockwork dwelling house, of approximately 312m² total floor area, with the ground floor of approximately 156m² accommodating an open workshop area, the enclosed area accommodating two, open plan sitting, dining area and internal kitchen, two bathrooms and toilet and open veranda, and the upper floor of approximately 156m² three bedrooms, one as master bedroom, a common toilet, and patio.

The building structure is of reinforced concrete and blockwork substructure, painted blockwork walling, tiling roofing, painted ceiling soffits at ground floor, aluminum frame and glass panel sliding doors and windows, all internal doors of wooden type, with ceramic tiling floor and wet wall finish and with the require electrical and sanitary services.

It is apparent that the house has suffered the impact of the age, weather, and usage, even though no major structural defects were identified attention is require to some building elements.

3.2.2 Workshop/Studio/Under Construction units (Built on Encroached land)

Four storey blockwork structure, built of full step design of approximately 323m² total floor area, with the lower ground floor (still under construction) of approximately 48m² accommodating internal space for one room, and ensuite bathroom, and outside store, the first-floor level (still under construction) of approximately 76m² accommodating internal space for accommodation facilities, the second-floor level of approximately 95m² accommodating a nearly open plan sewing studio and an under-construction ensuite unit at the eastern elevation and the second of approximately 104m² accommodating a nearly open plan studio and an under construction ensuite unit at the eastern elevation floor three bedrooms. The building structure is of reinforced concrete and blockwork substructure, partly painted blockwork walling, corrugated zinc aluminium roofing, partly painted ceiling soffits at the ground floor, aluminium frame, and glass panel sliding doors and windows.

It is apparent that the structure has been recently and still undergoing both horizontal and vertical extension, and other than the two studio works still to be completed the studio (older structure) has suffered the impact of the age, weather, and usage.

3.2.3 Other Developmental works

- i. Paving area, reinforced concrete paving at the southwest elevation of the dwelling house.*
- ii. The retaining wall combines rockwork and concrete walling alongside the western, southern, and eastern boundary.*
- iii. Boundary wall, concrete pillars with railing walling onto the northeastern retaining wall.*

[254] Mr Valentin stated that this property H1346 is where the main house is located. In addition to the valuation of land parcel H1346 (SCR634,833.00) and the house (SCR2,248,704.00) and other structures (SCR830,270.00) thereon, he also included a valuation of the structures encroaching on an adjacent property namely H10786 as they were built by Mr Pillay (SCR2,726,480.00). However given that the structures on Title H10786 were encroachments and H10786 does not belong to Mr Pillay the land comprised in Title H10786 was excluded from his valuation. Mr Valentin compared his total valuation of SCR6,440, 287.00 to that of Mr Accouche contained in Exhibit P21 (H1346 – land and structures) of SCR3,618,047.86 and Exhibit P22 (H10786 – improvements on property excluding land) of SCR2,279,362.00 amounting to a total of

SCR5,897,409.86. He stated that the difference of SCR542,877.14 between his (SCR6,440,287.00) and Mr Accouche's (SCR5,897,409.86) valuations is within the acceptable 15% margin.

[255] However he drew attention to the depreciation by Mr Accouche of land parcel H1346 by SCR72,000.00 on the basis that "*the main existing house including terrace on [on H1346] has encroached on Parcel No. H10786 ... This can hinder the sale of the property on the open market, as any prospective buyer will demand that any encroachment will need to be rectified before any purchasing agreement is/or can be reached*" (Exhibit P21, pg6, last para.). Mr Valentin had valued land parcel H1346 excluding any structures at SCR634,833.00 compared to Mr Accouche's valuation of SCR466,8700.00. He opined that a plot of land i.e. H1346 cannot be depreciated on the basis of an encroachment on another plot of land i.e. H10786, as it does not affect the value of the first mentioned plot of land (H1346). The encroachment would affect the value of the house as it is the house which has encroached on H10786 but not the value of H1346. He is therefore of the opinion that H1346 should not have been depreciated by SCR72,000.00, and stands on his own valuation in that respect.

[256] Mr Valentin also disagreed with Mr Accouche's depreciation of the main house by SCR2,717,600.00 (Exhibit P21, pg 7, item before last in last column) which he states amounts to above 50% of the building value as new i.e SCR5,422,455.86. He explained that once a building has depreciated by more than 60% it will cost more to maintain than the actual value of the building and at least 60% of the value of the building has to be spent on maintenance to make the building fit for habitation, which means that the building is inhabitable at present. If therefore the building is actually occupied it cannot have depreciated by more than 50%. He further stated that if the building had depreciated by that much it would have needed major repairs whereas the main structure is still very good and the building only requires some finishing and some surface work due to being located in a heavily damp area. Mr Valentin therefore concluded that the depreciation applied by Mr Accouche was too high and needed to be reconsidered. He further pointed out that he had also depreciated the house but by SCR311,760.00 and stood by his valuation in that regard.

[257] As for the the valuation of the encroachments on H10786, Mr Valentin stated that he and Mr Accouche had used different valuation methods. Whereas he had used the square metre method and obtained a valuation of SCR2,726,480.00, Mr Accouche had obtained the drawings for the structures and used the elemental method obtaining a valuation of SCR2,279,362.00. He stated that the elemental method gives a more accurate figure and in the circumstances he would not challenge Mr Accouche’s valuation of the encroachments.

(f) Exhibit D32 – “**VALUATION OF PROPERTY LAND PARCEL PLOT No. V1332 (184m²), ALL BUILT STRUCTURES AT ENGLISH RIVER. MAHE, SEYCHELLES**”.

[...]

*I hereby certify that in my opinion, the detail evaluation and thorough analysis of data collected during the site visit made on Tuesday 25th June 2019 and land survey documents conclude that the Current Market Value of the Property is valued to be at a sum of **Five Million Eight Hundred and Forty-Four Thousand One Hundred and Forty-Eight Seychelles Rupees only (SR5.844.148.00)**.*

1. Purpose of valuation

Purpose of the Valuation of the property is to establish the Current Market Value land and any developmental work performed by the date of the conducted site visit for litigation and shares apportion purposes.

2. Basis of the Valuation

The analysis of the valuated elements considered in this evaluation is based on,

2.1 Land Survey GIS plan of Parcel No. VI 332.

2.2 Site visit dated Tuesday 25th June 2019, where the site was identified, and all factual evidence visibly present on the property was collected and has been considered in the valuation.

2.3 Comparative Market trend in relation to property value and developmental cost.

2.4 Current condition and state of structural and finishing of the built structures.

Exclusion

2.5 All movable furnishing, equipment’s, and appliances.

3. PROPERTY DESCRIPTION

3.1 LAND

- a) **Parcel reference**, the property is known as Parcel No. VI332 of 184m², of freehold property in the Union Vale area of the English River electoral district on Mahe, Seychelles.
- b) **Location**, The property is located on the right-hand side of the Castor road at approximately 65m before the newly built roundabout when coming from Victoria through the Castor road, it is within the Greater Victoria and easily accessible.
- c) **Boundary**, The property is boundary to the Castor road alongside its northern boundary line, and to other privately owned properties at other boundary lines.
- d) **Ground condition**; The property is of a trapezoidal shape, of initially sloppy ground surface, of which ground preparation work has been performed to accommodate the existing structure, it is currently mostly constructed upon, with a topographical level of around 5m above datum level.
- e) **Access**; The property is boundary to Castor road and motorable access is ready and available in the demarkable parking facilities.
- f) **View**; Due to its low topographical level and other development on its eastern boundary no significant view is available.
- g) **Peace**; the property is boundary to a heavily used road, therefore the property is constantly exposed to heavy traffic noise, especially during daytime.
- h) **Plants**; Most of the property ground surface has been built and no plants of significant value were identified.
- i) **Risk**; the property is not exposed to any environmental risk.
- j) **Services**, The area is connected to all main public utilities, and IT services
- k) **Used ground surface**, The property is currently accommodating a full step – design commercial building which covers a total of approximately 285m² (encroaching on V15988), of which approximately 152m² is onto V1332.

3.2 DEVELOPMENTAL WORK

3.2.1 Commercial building

Step design building, of approximately 459m² total floor area, with the lower ground floor of approximately 173m² and the main floor of approximately 285m² accommodating three possible independent rental units.

The building structure is of reinforced concrete and blockwork substructure, reinforced structural concrete retaining, painted plastered blockwork walling corrugated zinc aluminium sheet roofing, painted ceiling soffits, with aluminium frame and glass panel windows (with antitheft protection), main door from of aluminium frame and glass panel sliding type, all other doors of wooden type,

with ceramic tiling floor and wet wall finish and with the require electrical and sanitary services.

The building is currently fully functional, It is apparent that it is fairly newly built, and not major structural deficiencies were identified.

3.2.2 Other Developmental works

- i. Retaining wall, Structural concrete step wall.*
- ii. Boundary wall, painted plastered blockwork walling alongside the eastern to the western boundary.*

[258] Mr Valentin was examined in regards to the difference of SCR977,900.23 between Mr Accouche's total valuation of SCR4,866,247.77 and his own valuation of SCR5,844,148.00 for V1332 and the building thereon. Mr Valentin had valued the land at at SCR717,200.00 whereas Mr Accouche had valued it at 743,240.00 and stated that the difference between the two valuations falls within the acceptable 15% range.

[259] As for the commercial building on V1332, Mr Accouche had valued it at SCR5,120,407.77 before depreciation (SCR997,400.00) and at SCR4,866,247.00 after depreciation, whereas Mr Valentin had valued it at SCR5,049,000.00 before depreciation (SCR191,180.00) and at SCR4,857,820.00 after depreciation. He stated that it appeared that Mr Accouche had used the elemental method of valuation and opined that the difference in the two valuations prior to depreciation fell within the acceptable margin. However he compared Mr Accouche's depreciation of SCR997,400.00 to his depreciation of SCR191,180.00 and stated that he could not see how Mr Accouche had obtained that sum as it was not specified in the report, and that furthermore a depreciation of SCR997,400.00 (i.e. of 20% of the value of the building) would only arise if the building required major repairs which would require the building to be closed to effect such repairs, whereas the building is operating and properly maintained. He stated that more clarification was required as to the basis for the depreciation. Mr Valentin stated that in his valuation, the depreciation of SCR191,180.00 arose from necessity for minor works due to usage.

[260] Mr Valentin stated that it is possible that Mr Accouche depreciated the commercial building by a bigger sum than he did because the building encroached on two other

properties leased by the Government to Mr Pillay and another unregistered parcel. However he stated that this is not a factor that should have been taken into consideration in calculating depreciation and that it should not affect the value of the building which is based on the construction cost of the said building. He stated that the depreciation of the building should be based on its current condition and not on whether it is built on another person's property. On that basis he could not accept Mr Accouche's valuation and stood by his own. Mr Valentin also pointed out that in his valuation Mr Accouche had not taken into consideration other developmental works on V1332 such as the retaining wall and the boundary wall which Mr Valentin had valued at SCR269,128.00.

(g) Exhibit D33 – **“VALUATION OF PROPERTY LAND PARCEL PLOT No. V9192 (841m²), AND ALL BUILT STRUCTURES AT SAINT LOUIS, MAHE, SEYCHELLES”.**

[...]

*I hereby certify that in my opinion, the detail evaluation and thorough analysis of the data collected during the site visit made on Tuesday 25th June 2019 and land survey documents conclude that the Current Market Value of the Property is valued to be at a sum of **Seven Hundred and Four Thousand Eight Hundred and Thirty-Seven Seychelles Rupees only (SR704.837.00).***

1. Purpose of the Valuation

The purpose of valuation of the property is to establish the Current Market Value of the land and any developmental work performed by the date of the conducted site visit for litigation and shares apportion purposes.

2. Basis of the Valuation

The analysis of the valuated elements considered in this evaluation is based on,

2.1 Land Survey GIS plan of Parcel No. V9192.

2.2 Site visit dated Tuesday 25th June 2019, where the site was identified, and all factual evidence visibly present on the property was collected and has been considered in the valuation.

2.3 Comparative Market trend in relation to property value and developmental cost.

2.4 Structural and finishing condition and materials use of the built structure.

Exclusion

2.5 All movable appliances, equipment's and appliances.

3. PROPERTY DESCRIPTION

3.1 LAND

- a) Parcel reference,** *The property is known as Parcel No. V9192 of 841m², of free hold property in the Dan Koko area, in the St Louis electoral District on, Mahe Island, Seychelles.*
- b) Location,** *The property is located at approximately 34m from the left-hand side of the main road at the Dan Koko Bus Stop when going coming from Victoria, even though it is within the central district it is not easily accessible, and in an area with no significant development and foreseeable difficult to develop.*
- c) Boundary,** *The property is boundary to other private properties at all boundary lines.*
- d) Ground condition;** *The property is of an ununiformed shape, of combine slightly sloppy and flat (at built area) ground surface, with a topographical level ranging 55m to 70m above datum level, with humid ground nearer the southern boundary, and with organic and gravel type soil, however approximately 259m² of the land nearer the road is considered a unbuildable.*
- e) Access;** *There is currently no legal right of way access to the property, it is access by means of foot path through property V20082 & V2923 till the north-eastern point of the property, future motorable access is possible through negotiation with the land owner and Planning approval.*
- f) View;** *Due to Its topographical level and overgrowth no significant view is currently available.*
- g) Peace;** *the property is located away from motorable road access, therefore other than the normal community environment, the property enjoy a fairly quiet and peaceful atmosphere.*
- h) Plants;** *Other than some planted planters (banana trees and little grassing), no plants of significant value were identified.*
- i) Risk;** *The property is not exposed to any other environmental risk*
- j) Services,** *The property is connected to all main public utilities, including the Greater Victoria Sewage system.*
- k) Used ground surface,** *A total of approximately 89m² of the ground surface is be occupied by the built structure.*

3.2 Developmental work

3.2.1 Dwelling house

Combine blockwork and corrugated iron sheet dwelling house, of approximately 89m², with internal partitioning to accommodate three bedroom, sitting area, kitchen,dining, and verandah.

The building structure is of combine reinforced concrete and blockwork (with suspended timber floor at verandah location) substructure, painted blockwork and cladded plywood (at veranda location) walling, corrugated iron sheet roofing, plywood ceiling soffits, galvanized frame and glass panel louvers type windows, all doors of wooden flush type, and with basic require electrical and sanitary services. It is apparent that the house even though it is currently occupied, it is in a very bad condition and has reached near its whole life cycle.

[261] Mr Valentin stated that V9192 is situated at “Dan Koko” at St. Louis, and has a dwelling house thereon and that the whole property – land and house – is valued at SCR704,837.00. He stated that this is a realistic valuation taking into account the location of the land and other positive and negative factors pertaining to the land, as well as the state of the dwelling house. He stated that although the house was livable he had depreciated it heavily because of its poor condition. He stood by his valuation.

(h) Exhibit D34 – **“VALUATION OF PROPERTY LAND PARCEL PLOT No. V9193 (249m²), AND ALL BUILT STRUCTURES AT SAINT LOUIS, MAHE, SEYCHELLES”**.

[...]

*I hereby certify that in my opinion, the detail evaluation and thorough analysis of the data collected during the site visit made on Tuesday 25th June 2019 and land survey documents conclude that the Current Market Value of the Property is valued to be at a sum of **Five Hundred and Thirty-Seven Thousand Two Hundred and Eighty-two Seychelles Rupees only (SR537,282.00)**.*

1. Purpose of the Valuation

The purpose of valuation of the property is to establish the Current Market Value of the land and any developmental work performed by the date of the conducted site visit for litigation and shares apportion purposes.

2. Basis of the Valuation

The analysis of the valuated elements considered in this evaluation is based on,

2.1 Land Survey GIS plan of Parcel No. V9193.

2.2 Site visit dated Tuesday 25th June 2019, where the site was identified, and all factual evidence visibly present on the property was collected and has been considered in the valuation.

2.3 Comparative Market trend in relation to property value and developmental cost.

2.4 Structural and finishing condition and materials use of the built structure.

Exclusion

2.5 All movable appliances, equipment's and appliances.

3. PROPERTY DESCRIPTION

3.1 LAND

- a) **Parcel reference,** The property is known as Parcel No. V9193 of 249m² of free hold property in the Dan Koko area, in the St Louis electoral District on, Mahe Island, Seychelles.
- b) **Location,** The property is located at approximately 83m from the left-hand side of the main road at the Dan Koko Bus Stop when going coming from Victoria, even though it is within the central district it is not easily accessible, and in an area with no significant development and foreseeable difficult to develop.
- c) **Boundary,** The property is boundary to other private properties at all boundary lines.
- d) **Ground condition;** The property is of a trapezoidal shape, of mostly made flat ground surface, with a topographical level of around 70m above datum level, with organic and gravel type soil.
- e) **Access;** There is currently no legal right-of way access to the property, it is access by means of footpath through property V20082 & V9192, future motorable access is possible through negotiation with the land owner and Planning approval.
- f) **View;** Due to Its topographical level and overgrowth no significant view is currently available.
- g) **Peace;** The property is located away from motorable road access, therefore other than the normal community environment, the property enjoy a fairly quiet and peaceful atmosphere.
- h) **Plants;** Other than some planted planters (banana trees and little grassing), no plants of significant value were identified.
- i) **Risk;** The property is not exposed to any other environmental risk.
- j) **Services,** The property is connected to all main public utilities, including the Greater Victoria Sewage system.
- k) **Used ground surface,** A total of approximately 62m² of the ground surface is be occupied by the built structure.

3.2 Developmental work

3.2.1 Dwelling house

Combine blockwork and corrugated iron sheet dwelling house, of approximately 62m, with internal partitioning to accommodate bedrooms, sitting area, kitchen, dining, and veranda.

The building structure is of reinforced concrete and blockwork substructure, blockwork (at lower level up to approximately 800mm) and painted corrugated iron sheet walling, corrugated iron sheet roofing, plywood ceiling soffits, galvanized frame and glass panel louvers type windows, doors of wooden type, and with basic require electrical and sanitary services.

The house is currently occupied and functional consideration has to be taken for its mode of construction and age.

[262] Mr Valentin had valued parcel V9193 which is also situated at “Dan Koko” at St. Louis, together with the dwelling house thereon at SCR537,282.00 on the basis of his observations at the site visit carried out on 25th June 2019. In the report the land is valued at SCR234,837.00 and the dwelling house at SCR302,445.00. Mr Valentin stated that he was unaware if there was no longer a house on the property but stated that because the sum of SCR234,837.00 for the value of the land also takes into consideration that there is a dwelling house on it and devalues the land by SCR27,918.00 for “Used ground (approximately 62m²)” (see pg4 of Exhibit D34 at para 4D), if the house was no longer there, the land would be valued at SCR497,589.00 (SCR234,837.00 + SCR27,918.00). Furthermore the value of the house i.e. SCR302,445.00 would no longer be applicable. The total value of the property would therefore be SCR497,589.00, which Mr Valentin stood by.

[263] In cross-examination Mr Valentin agreed having stated that valuation of properties is not an exact science and different quantity surveyors can have variations in their valuations for the same property, but clarified that if the factors considered in carrying out a valuation such as the quantity and the rates are the same then the valuation should be the same. He stated that he had identified the properties where the differences between the valuations carried out by him and the valuations of Mr Accouche could be reconciled and an average arrived at, but stated that there were also some properties where there could be

no reconciliation between his and Mr Accouche's valuations and in respect of which he stood by his own valuations.

[264] He stated that the factors that would affect the rates used for valuing land, would be for example whether the land was virgin land or had been built on, whether there was access to it, any risks to which it is exposed, whether there were any plantations on it or any restrictions to developing the land. As for buildings, they are valued in terms of their actual state/condition by taking into account their construction value/cost from which depreciation is deducted.

[265] He explained that any differences between valuations made by two quantity surveyors for the same building would arise from the different factors taken into consideration for the valuation which would determine the rates used by them. He stated that if a valuation is based on the drawing of a building, the valuation will be accurate as the quantity surveyor will be able to carry out an analysis of the drawing which will give him the actual cost of the building. On the other hand if no drawing is provided the valuation is less accurate and this is where differences in the quantity surveyors' reports will arise. Mr Valentin agreed that neither he nor Mr Accouch had had the benefit of consulting drawings for the valuations of the properties in this case and it was therefore normal to have variations in their valuations. He stated that even with drawings no two quantity surveyor's reports will come out exactly the same.

[266] Mr Valentin stated that where there are differences in valuations of two quantity surveyors, whether an average of the two sums can be used by the courts will depend on the extent of the difference between the two valuations. If there is a small difference of about 15% between the two valuations i.e. if Mr Accouche's valuation is 15% higher or lower than his, then the average can be used. The 15% represents a margin of error between the two valuations. He agreed with counsel for Mr Pillay that as an expert his evidence was not intended to discredit the findings of Mr Accouche.

[267] Mr Valentin agreed that there was a difference of over SCR600,000.00 in Mr Accouche's valuation of SCR410,233.97 (Exhibit P18) and his own valuation of SCR1,042,213.00

(Exhibit D28) in respect of property H2307 and the structures thereon. He also agreed that he could not account for why Mr Accouche came to that much lower sum but stood by his own report. Mr Valentin accepted that while he had taken into consideration the paving work, retaining wall and boundary wall, Mr Accouche had not done so, but stated that this would only account for part of the difference between the two valuations.

[268] In regards to the difference of over SCR100,000 in the valuation of Mr Accouche of SCR564,518.00 (Exhibit P19) and his own valuation of SCR709,371.00 (Exhibit D29) in respect of parcels H6465 and H6466, Mr Valentin stated that although he could not account for the differences between the two valuations he stood by his own, and furthermore the difference was within the acceptable range.

[269] As for land parcel H1345 and the structures thereon which Mr Valentin valued at SCR3,658,967.00 (Exhibit D30) and Mr Accouche valued at SCR3,367,080.68 (Exhibit P20) so that there is a difference of about SCR200,000.00 between the two valuations, Mr Valentin stood by his testimony that the difference arose mainly from Mr Accouche having heavily depreciated the land because of an encumbrance in the form of a right of way which Mr Valentin does not consider as a factor which would depreciate the land. He explained that the right of way is still part of the parcel which gives it value in terms of the land usage density i.e. what percentage of the land can be used for construction, and does not really affect the value of land. He then conceded that it could be considered as a depreciating factor although at a much lower rate than that calculated by Mr Accouche. Furthermore he stated that the right of way benefits the property because it provides access to the property itself.

[270] In regards to H1346 (Exhibit D31) and the house thereon, Mr Valentin confirmed that Mr Pillay had been present when he visited the property on 25th June 2019 for valuation purposes, but he does not recall if he had been there right from the start or came afterwards. His valuation includes parcel H1346, the main house thereon, as well as other structures encroaching on another plot of land (which he described as a “sort of workshop” as well as another building on the side which was still under construction) but excludes the land encroached upon. He stated that the main house is a two storey house

which is not new and has certain deficiencies due to age, weather and usage. The house has no major structural defects, but has deficiencies in regards to its finishing and its exterior, and is habitable.

[271] He reiterated that he valued the land at SCR634,833.00, the main house at SCR2,248,704.00 and the other developmental works (retaining wall, concrete pavings and boundary wall) at SCR830,270.00. He valued the structures encroaching on H10786 at SCR2,726,480.00. Mr Accouche's valuation for the same property H1346 is contained in Exhibit P21 in which he values the land at SCR466,800.00 and the structures (main house SCR5,422,455.86 – depreciation SCR2,717,600.00 = SCR2,704,855.86; stone retaining walls SCR731,250.00 – depreciation SCR341,250 = SCR390,000.00; and reinforced concrete pavings SCR56,392.00). Mr Accouche's report does not include any valuation for the structures encroaching on H10786 (which the Court notes is contained in a separate report namely Exhibit P22). The total value of H1346 and the house thereon as per Mr Valentin's valuation came to SCR2,883,537.00 (SCR634,833.00 + SCR2,248,704.00) and per Mr Accouche's valuation to SCR3,171,655.86 (SCR466,800.00 + SCR2,704,855.86) with a difference of SCR288,118.86 arising from Mr Valentin's more conservative depreciation of the house which he stated was within the acceptable range.

[272] In regards to V1332 and the building thereon Mr Valentin accepted that Mr Accouche's valuation of the land as shown in Exhibit P23 (SCR743,240.00) as compared to his valuation in Exhibit D32 (SCR717,200.00) fell within the norm, and that the average between the two figures could be used. As for the building, Mr Valentin maintained that Mr Accouche's valuation prior to depreciation (SCR 5,120,407.77) was fine and not far from his own valuation prior to depreciation (SCR5,049,000.00) but that it was the amount of depreciation (SCR191,180.00) applied by Mr Accouche which was of concern and that he could not explain what depreciating factors were considered by Mr Accouche to reach that sum. It was put to him that this could be explained by what he himself had stated that quantity surveying is not an exact science and that differences of 15% above or below valuations made by different quantity surveyors are to be expected. He maintained that the amount of depreciation arrived at by Mr Accouche i.e. 20% could

only have been justified if the building required major refurbishment which was not the case. He opined that encroachment of a building on other parcels not belonging to the owner of the building should not have any effect on the value of the building. He explained that Mr Accouche had used the elemental method of valuation for the building: he has made a breakdown of each element of the building (see pgs 9 &10 of Exhibit D32) and calculated the elemental cost, the cost per m² and the percentage cost of the whole building, of each element to calculate the reconstruction cost of the building at the time of the valuation i.e. SCR 5,120,407.77. He further explained that while depreciation due to ageing and usage can be considered insofar as the building is concerned an encroachment will not cause depreciation thereof, although it could have an effect on the value of the land as a potential buyer has to also factor in the additional costs of buying the land which has been encroached, but that this had not been considered by Mr Accouche.

[273] In regards to V9192 and V9193, Mr Valentin stated that when he visited the two properties there were no signs of any beacons separating them and he was not told that they were two separate parcels, so initially he took the two parcels as one property with two houses on it and accordingly drafted one report for both properties. Subsequently, he revised the report and produced two reports namely Exhibits D33 and D34 for V9192 and V9193 respectively. Mr Valentin stated that although he had informed Mr Pillay's lawyer as to when he was going to visit the property Mr Pillay had not been present and he does not know whether Mr Pillay had been informed of the same. After his first visit he did not go back to the two properties (V9192 & V9193) and therefore would not know which of the two houses had burnt down and no longer existed i.e. if it was the one on V9192 (Exhibit D33) or the one on V9193 (Exhibit D34). In regards to property V9192 and the house thereon, he stated that although he depreciated the house on the property heavily it was valued at SCR98,441 because it was still habitable. At the time he visited the property Mr Pillay's father was occupying the house but he does not recall in whose name it was registered. In regards to property V9193 given that the house burnt down, he reiterated that in his analysis the sum of SCR27,918.00 for "*Used ground approximately 62m²*" (see pg 4 of Exhibit D34 at item 4D) which had been deducted as a devaluable factor which depreciated the land should be added back to the value of the land (i.e. SCR27,918.00 + SCR234,837.00). Any building on a parcel of land depreciates the value

of the land as you are no longer free to do what you want on that land as in the case of virgin land. Because the house burnt down V9193 has now appreciated by SCR27,918.00.

The Applicable Law

[274] The present petition and counter-petition were filed on 23rd October 2017 and 8th June 2018 respectively. The current matrimonial property law under the Civil Code of Seychelles Act 2021, which only came into operation on 1st July 2021, therefore does not apply to the petition and the counter-petition. The applicable law in regards to the present case is the Matrimonial Causes Act Cap 124 (“the MCA”) and the rules made thereunder namely the Matrimonial Causes Rules (“the MCR”) which were in operation prior to 1st July 2021.

[275] Section 20(1) of the MCA provides in relevant part 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 –

[...]

(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.

[276] Section 25(1) of the MCA further provides as follows:

25. (1) Without prejudice to any other power of the court, the court may, on an application by a party to a marriage, grant such order as it thinks fit-

(a) for the protection of a party to the marriage or a relevant child;

(b) restraining a party to the marriage-

- (i) *from entering or remaining in any premises or any part of any premises, including the matrimonial home, where the other party resides or works;*
- (ii) *from entering the premises of any educational or training institution at which a relevant child is attending;*

(c) in relation to the property of a party to the marriage or the matrimonial home;

(d) relating to the occupancy of the matrimonial home.

[277] The petition is made under Rule 4(1)(f), (h)(i) and (j) of the MCR which provides for the mode of making a claim for ancillary relief under the preceding provisions of the MCA, where this is not done in the divorce petition. These provisions provide 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:-*

[...]

*(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;*

[...]

(h) restraining a party to a marriage-

(i) from entering or remaining in any premises or any part of premises including the matrimonial home, where the other party resides or works;

[...]

(j) an order relating to the occupancy of the matrimonial home;

Analysis

[278] In terms of his petition, Mr Pillay seeks orders for adjustment of the matrimonial property of the parties, which he specifically states as parcels H1343 (which was subdivided into

H6465 & H6466) at Pointe Conan and H1345 at Majoie which he refers to alternately as “*the matrimonial home*” and “*the matrimonial property*”. In particular he seeks for orders declaring him as the sole owner of the abovementioned properties under Rule 4(1) (f) of the Matrimonial Causes Rules (the “Rules”); allowing him sole occupation of the properties under Rule 4(1)(j) of the Rules; and ordering Ms Lablache to vacate the matrimonial home and restraining her from entering and remaining in such matrimonial home under Rule 4(1)(h)(i). Although his testimony and documentary evidence exhibited covers other properties, his petition refers only to H1343 and H1345 and the matrimonial home thereon. His claim is based on having solely financed the purchase of the properties and the renovation and maintenance of the house on H1345. This is denied by Ms Lablache in her oral testimony although she did not file a reply to the petition. The tenor of her counter-petition also counters Mr Pillay’s assertions that he solely financed the acquisition of the said properties and the renovation and maintenance of the house on H1345.

[279] On her part Ms Lablache, in her counter-petition, seeks a half share in “*all the properties owned solely by Mr Pillay or jointly by the parties, including those which have been disposed of by [Mr Pillay] to his children*”. In addition Ms Lablache prays to be awarded sole ownership of titles H1345 and the house thereon, H6465 and H6466 (subdivisions of H1343) or alternatively Title V1332 with the building thereon. Ms Lablache makes her claim on the basis of her contributions to the acquisition of some of the properties themselves, and generally to the family and household both monetarily and in kind, during the period of co-habitation and marriage of the parties. Mr Pillay on the other hand claims that Ms Lablache is not entitled to any of the properties or a share therein as according to him, she never contributed to the acquisition of any of the land or to the construction of the buildings thereon, and that furthermore she did not have the means to do so. He also claims that some of the properties that Ms Lablache is claiming a share of no longer form part of the matrimonial property of the parties as they have been transferred to the children of the parties and are no longer owned by him.

[280] In light of the pleadings, three preliminary matters arise for the Court’s determination, before consideration of the claims of the parties to the various properties to which their

respective claims relate. The first is whether the counter-petition relates to both movable and immovable properties. The second relates to whether a claim under section 20(1)(g) may be made only in respect of matrimonial property. The third is whether property which has been transferred to a third party may be the subject of the orders sought by the parties. After dealing with these three matters, the Court will proceed with an examination of certain principles established by our local jurisprudence in regards to the application of the provisions of the MCA, in light of the particular facts of this case, before dealing with the parties' claims.

Do the orders sought relate to both movable and immovable properties?

[281] Although Ms Lablaches's claim for a half share in "*all the properties belonging jointly and solely to ... [Mr Pillay]*" would cover both movable and immovable properties, no claim has been made in regards to specific items of movable property although evidence was led in regards to certain vehicles (ISUZU Pick up Registration No. S24137, ix35 Jeep Registration No. S18818, and HONDA HR-V Jeep Registration No. S11649), the only one of which remains in the ownership of the parties being the ISUZU Pick up registered in the name of Mangouya Creations. I note however that Mr Pillay only raised the issue of the vehicles to support his claim that Mrs Lablache had benefitted from the rent of the building on V1332. In that regard he claims that he paid off the entirety of the loan for the vehicle with money received for the rent of the building. In rebuttal Ms Lablache testified that she purchased all the vehicles with loans: the Honda was sold and the proceeds together with a loan were used to buy the ix35, which was in turn sold and the proceeds together with a loan were used to buy the ISUZU. Exhibit 14 supports that loans were borrowed to purchase the Honda and the ix35. Mr Pillay's testimony also supports Ms Lablache's claim that the ISUZU was purchased with a loan, as he claims to have repaid part of that loan which is accepted by Ms Lablache who admitted that he paid SCR45,000 (i.e. SCR5,000 x 9 months) towards the loan repayments. However given that Mr Pillay made no claims in regards to movable properties and has confined his claim solely to H1343 and H1345, I decline to make any award in regards to the ISUZU Pick up Registration No. S24137, which in any event is registered to Ms Lablache's business and not to her personally.

[282] As for the immovable properties subject matter of the petition and counter-petition, the evidence on record reveals that H1345, H6465 and H6466 are co-owned by the parties. The immovable properties still registered in the sole name of Mr Pillay are V9192 and V9193 with the usufructuary interest registered in the name of his father Mr Georges Herbert Pillay and H10786. The immovable properties previously registered in the sole name of Mr Pillay which he transferred to his children but in which he holds the usufructuary interest are H1346 (transferred to Kimberley and Inesh Pillay), H6638 (transferred to Kimberley and Inesh Pillay) and V1332 (transferred to Kimberley and Iouanna Pillay). H2307 which was also in the sole ownership of Mr Pillay and in which Mr Francis Ally holds the usufructuary interest was transferred to Inesh Pillay.

Property in respect of which a claim under section 20(1)(g) of the MCA may be made

[283] Given the wording of Mr Pillay's petition which refers to "*matrimonial property*" of the parties, it is important to note that for the purposes of a petition made pursuant to section 20(1)(g) of the MCA it is irrelevant whether or not any of the properties subject matter of this claim are considered as the matrimonial property of the parties, or even if they were acquired by one of the parties before marriage, as long as it is the property of one of the parties. In the Court of Appeal case of *Boniface v Malvina* (SCA 41/2017 [2020] SCCA 11 (21 August 2020) the parties were divorced after 22 years of marriage. Prior to the marriage the respondent husband, Malvina, had acquired land and built a house thereon, which remained in his sole name and in which the parties lived and brought up their children. Following the divorce, no matrimonial property proceedings were brought by either party and the appellant wife, Boniface, remained in the house with the minor children. The husband filed a plaint requiring the wife to vacate the house. The latter raised pleas in *limine litis* in her statement of defence that the plaint did not disclose a cause of action and that it was bad and unsustainable in law, and prayed for dismissal of the plaint and the adjustment of the matrimonial home in her favour with an order that the husband transfer the matrimonial home into her name upon payment of a sum of money by her to him. The trial judge dismissed the pleas in *limine litis* and having stated that "[i]t follows, further, that having regards to the Statement of Defence of the Defendant 'on the basis that the property is the matrimonial home', that there is no *raison d'être* in

the circumstances for this Court to continue to hear this matter on the merits” ordered the wife to vacate the property. On appeal by the wife, the Court of Appeal held that the trial judge had been incorrect to rely on French law to conclude that “... the property in question cannot be regarded as matrimonial property for the property was bought and the house erected thereon prior to the marriage.” It further held that –

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.

13. In the circumstances, the correct course of action would have been for the plaint to be dismissed and for an action to be brought under the MCA for the division of the house pursuant to the MCA ...

Can the orders sought by the parties be made in respect of property owned by third parties

[284] It would also seem, in view of the wording of the applicable law (S20(1)(g) & S25(1)(c) MCA and R4(1)(f) of the MCR) which refers to “*any property of a party to a marriage or any interest or right of a party in any property*”, that the properties which were

previously registered in the name of Mr Pillay but have been transferred to the children of the parties, and therefore are no longer the property of Mr Pillay, cannot be the subject matter of an application under the aforementioned provisions of the MCA and MCR. It is only the usufructuary interest that he still holds in H1346, V1332 and H6638 which could be the subject matter of such application, and it is noteworthy that he made no mention of his usufructuary interest in those properties in his petition. Ms Lablache claims that these properties were disposed of by Mr Pillay in 2016 whilst divorce proceedings were ongoing to defeat any claims made by her to a share of such properties, and I am satisfied that insofar as Ms Lablache's claim concerns those properties, their transfer would have the effect of defeating her claims as they are no longer the property of a party to a marriage as required under the applicable legal provisions.

[285] Section 22 of the MCA makes provision for “*Anti-Avoidance measures*” to provide for remedies where one of the parties disposes of or transfers property with a view to defeating the claim of the other party for financial relief under *inter alia* section 20 of the MCA, under which orders are sought in the present petition and counter-petition. Section 22 provides in relevant part as follows:

22. (1) *Where a proceeding for a claim for financial relief is brought by a party against another party, the court may, **on the application of the party** -*

[...]

*(b) if it is satisfied that the other party has, with the intention of defeating the claim, made a reviewable disposition and that if the disposition were set aside financial relief or different financial relief would be granted to the applicant, **make an order setting aside the disposition and give such consequential direction as the court thinks fit for giving effect to the order;***

[...]

*(2) An application for the purposes of subsection (1)(b) shall be made **in the proceeding for a claim for financial relief.***

(3) Where an application is made under this section with respect to a disposition or transfer of or other dealing with property and the court is satisfied –

(a) in a case falling within paragraph ... (1)(b), that, the disposition, transfer or other dealing would have the consequence ...

[...]

of defeating the applicant's claim for financial relief, the disposition, transfer or other dealing shall be presumed, unless the contrary is proved, to have been made by the other party with the intention of defeating the claim.

(4) In this section-

“disposition” includes any transfer, assurance or gift or property of any description, whether made by an instrument or otherwise but does not include any provision contained in a will or codicil;

“disposition defeating a claim for financial relief” means a disposition –

- (a) preventing financial relief from being granted,*
- (b) reducing the amount of financial relief which might be granted;*
- (c) frustrating or impeding the enforcement of any order for financial relief which might be or have been made;*

“financial relief” means a relief under section 19, 20 or 23;

“reviewable disposition” means any disposition other than a disposition made for valuable consideration to a person who at the time acted in good faith and without notice of any intention on the part of the other party to defeat the applicant's claim for financial relief. Emphasis is mine

[286] In her counter -petition Ms Lablache seeks to be awarded a half share in all the properties belonging jointly and solely to Mr Pillay, *“including those disposed of by [him] to his children”* and to be awarded titles H1345 and the house thereon, H6465 and H6466 (subdivisions of H1343) or alternatively Title V1332 with the building thereon (which has also been transferred to his children). She also prays for *“[a]ny other orders that this Honourable Court deems fit and proper in the circumstances of this case”*. In her supporting affidavit she also avers that parcels H1346, V1332, H2307 and H6638 have been transferred to the children of the parties (paras 16, 22 and 24) and that although Mr Pillay only has the usufructuary interest therein, (except for H2307 in which Mr Francis Ally holds the usufructuary interest, he still owns, controls and benefits from them (para

27). She also avers that he has attempted to defeat her claims by transferring the bare ownership of the aforementioned titles to their children since their separation which shows his bad faith (para 28). She further avers that she is entitled to a share of all the properties and buildings on the properties they have acquired during the period of their cohabitation and marriage, including the matrimonial home and the properties transferred to their children (para 31). In her affidavit Ms Lablache repeats the same prayers as in the counter-petition. In my view, although she has not specifically applied for the disposition of the properties to the children of the parties to be set aside, as provided for in section 22 referred to above, the same may be inferred from her prayer to be awarded a half share of the properties disposed of by Mr Pillay to his children, in particular when this is read together with her prayer for any other orders deemed fit and proper in the circumstances of this case, and in light of her averment that the properties in question were transferred by Mr Pillay in an attempt to defeat her claims. I therefore find that an application was made by Ms Lablache in terms of section 22 of the MCA for setting aside the dispositions of H1346, V1332, H2307 and H6638. I further find that the dispositions are “*reviewable disposition(s)*” and “*disposition(s) defeating a claim for financial relief*” within the meaning given to those terms in section 22(4).

[287] Where an application is made under section 22 of the MCA for setting aside a disposition which the Court is satisfied would have the consequence of defeating a claim for financial relief, subsection (3)(a) of that section establishes a rebuttable presumption that the disposition was made with the intention of defeating such claim. Mr Pillay commenced divorce proceedings on 10th February 2016, and the conditional order of divorce was delivered on 17th February 2017, and made absolute on 12th October 2017. He transferred parcels H1346 and H6638 to Kimberley and Inesh Pillay retaining the usufructuary interest therein for himself, by transfer deed dated 23rd July 2016 and registered on 9th August 2016 during the divorce proceedings. Parcel V1332 was transferred to Kimberly and Iouanna Pillay with the usufructuary interest being retained by Mr Pillay as shown by Exhibit P6(d) – Certificate of Official Search dated 22nd May 2017 - but it is not possible to know the date of the actual transfer as no transfer document was produced. The same goes for Parcel H2307 which was transferred to Mr Pillay in 2012 by Mr Francis Ally who retained the usufructuary interest therein, and

subsequently transferred by Mr Pillay to Inesh Pillay with the usufructuary interest remaining in favour of Mr Francis Ally as shown by Exhibit P14(a) – Certificate of Official Search dated 22nd May 2017. In the absence of transfer deed it is not possible to ascertain the actual date of the transfer to Inesh. However Mr Pillay has not denied that the transfers to the children were made whilst the divorce proceedings were ongoing, but claims that he transferred the property to them to ensure that they were taken care of as their mother had threatened to throw them out on the street if he died before her, which Ms Lablache denies having said. In any event, it is clear that Mr Pillay filed his petition for adjustment of matrimonial property on 23rd October 2017, after the properties had been transferred to the children as shown by the dates of the Certificates of Official Search i.e. 22nd May 2017, which gives credence to Ms Lablache’s claim that he did so to deny her the share of such properties to which she is entitled. Having observed Mr Pillay’s demeanour at the hearing and considering his testimony as a whole, I do not believe the reason given by him for transferring the property to the children. I am convinced that this is just a story that he is making up to justify the transfer of the properties to the children whereas the real reason was to deprive Ms Lablache of her share of the same. On the other hand Ms Lablache came across as credible when she testified that even if the children no longer talk to her she still loves them and wants the best for them. Having observed and listened to her I find it hard to believe that she would throw them out on the street if their father was no longer there. I am persuaded that Mr Pillay transferred the properties to them with the intention of denying Ms Lablache her share therein, thereby protecting his own interests. It also speaks volumes that Mr Pillay has retained the usufructuary interest on parcels H1346, H6638 and V1332, the bare-ownership of which he has transferred to his children, so that while he has full enjoyment of such property no claims can be made by Ms Lablache in respect thereof, further confirming that he was trying to defeat any claims made by her in respect of such properties. He was unable to do so in regards to H2307 as the usufructuary interest in that property is already held by Mr Francis Ally. It is also interesting and further evidence of Mr Pillay’s bad faith that in his petition he only mentions the properties which are co-owned by the parties, namely parcels H1343 (subdivided into H6465 & H6466) and H1345 and not the other properties in his sole ownership which were acquired during the

relationship and/or marriage of the parties. This gives the distinct impression that he was attempting to conceal the existence of these properties from the Court with the intention of depriving Ms Lablache of any share she may have therein. At the hearing of this matter, he had no choice but to adduce evidence in respect of these properties as they were the subject of Ms Lablache's counter-petition, although even then he denied that she had any share therein as he claims that she had not contributed to the acquisition of the land or the construction of the structures thereon. This impression is further strengthened by the fact that in his petition he refers to H1345 as the "*matrimonial home*" whereas it is clear from the testimony of the parties that it is the house on H1346 which is the matrimonial home as it is the home that the parties shared prior to and after their marriage, where they brought up and lived with their children, up to the time they separated and Ms Lablache moved into the house on H1345 in 2016. In fact it seems to be the only home that they have ever shared, and the only reason I can find for Mr Pillay to refer to the house on H1345 as the matrimonial home in his petition is to mislead the Court, as the family has never occupied that house, and Ms Lablache only moved there alone after the parties' separation.

[288] In view of the foregoing, I find that Mr Pillay has failed to rebut the presumption established under section 22(3)(a) of the MCA that the dispositions of the aforementioned properties were made with the intention of defeating Ms Lablache's counterclaim. I therefore find that he transferred H1346, H6638, V1332 and H2307 to the children of the parties with the clear intent of denying Ms Lablache of her rightful share in such properties. Under section 22(1)(b) once the Court is satisfied that the disposition of properties by a party was made with the intention of defeating the claim of the other party, it must also satisfy itself that if the disposition were set aside "*financial relief or different financial relief would be granted to the applicant*" before it makes an order setting aside the disposition. Before making any orders in terms of section 22 for the setting aside any dispositions, it is therefore necessary for the Court to determine the relief which it will grant to Ms Lablache, which will in turn depend on the entitlement of Ms Lablache, if any, to the aforementioned properties which were disposed of. It is only after such determination is made that this Court will be in a position to know whether the dispositions will have an effect on the relief it intends to grant to Ms Lablache. This will

be done after an examination of the applicable principles established by case law, to which regard must be given to determine the entitlement of Ms Lablache to the properties and the relief to be granted to her.

Applicable Principles established by local Jurisprudence.

[289] As, stated Ms Lablache makes her claims on the basis of her contributions in monetary terms and in kind to taking care of the family and the running of the household as well as the acquisition of some of the properties and/or construction of structures thereon, which she is now seeking to be awarded a share or sole ownership of. As also stated Mr Pillay denies that Ms Lablache made any such contributions to the acquisition of land or to the construction of the buildings thereon. He also claims only he made monetary contributions to the upkeep of the family and home. He claims that she did not have the means to make such contributions. *Boniface v Malvina* (supra) is also authority that whether or not a party to a marriage contributed to the purchase of property by the other party or to the erection of the building thereon, the first mentioned party may still be entitled to a share of the property, depending on the circumstances of that particular case.

[290] I also find the Court of Appeal case of *Faure v Sinon* (Civil Appeal SCA 23/2021) [2023] SCCA 11 (26 April 2023) relevant to the present case insofar as it concerns the share to which a party is entitled in light of their contribution thereto. Although that case dealt with property in co-ownership of the parties, it also provides guidance in respect of properties which are in the sole ownership of one party. In that case the trial judge found that each party was entitled to a half share of the matrimonial property comprising land and developments thereon including a house, which was registered in the joint names of the parties, in spite of the respondent wife having contributed substantially less than the appellant husband thereto. The first ground of appeal raised by the appellant (petitioner in the Supreme Court) before the Court of appeal was: “*that the learned Judge erred in law and fact in her assessment of the parties’ shares and contributions to the matrimonial regime on the basis of the evidence which clearly showed a much greater contribution by the Appellant certainly more than a half share*”. He therefore prayed for a reassessment of each party’s contribution to the matrimonial regime based on the evidence. The Court of Appeal endorsed the trial judge’s view that the respondent was entitled to a half share

of the property although her contributions to the property were substantially less than the appellant's. In the judgment Andre JA referred to section 20(1)(g) of the MCA and stated as follows:

25. *In Esparon v Esparon (1998-1999) SCAR 191, the court held that when considering "all the circumstances" under section 20(1) of the Matrimonial Causes Act, the court may have regard to factors such as –*

- (a) The standard of living of the spouses 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 benefit which a party loses as a result of the divorce*

26. *The Appellant submits that the trial judge did not place much weight on the fact that throughout the parties' marriage, the Appellant earned more than the Respondent, and therefore should have factored that when determining the Respondent's entitlement to the matrimonial property. It is the view of this Court that a party's contribution to the matrimonial property is only one of the factors that the court will consider when enquiring into "all the circumstances of the case." Notably, the court in the Esparon case did not name as a factor "financial contributions" of the parties as significant, but instead that the "contributions of each party to the welfare of the family, including housework and care roles" are relevant. The court's finding should be revelatory to the Appellant who also cited this case in support of his submissions. Further, in her judgment, the trial judge made references to the fact of the Appellant having earned more money when compared to the Respondent, stating, among other things, "I have found above that at the time that the parties were in the UK the Respondent's income was substantially less than the petitioner's" [Paragraph 139]; and, "It is clear that throughout the marriage the petitioner was the one with the job which brought in more money" [Paragraph 140]. Thus the trial judge was very cognizant of the Appellant's superior earning status - at least when compared to the Respondent's earning power.*

27. *Having alluded to the Appellant's obvious higher earnings, the trial judge however, acknowledged the Respondent's contribution to the matrimonial property declaring "However, although the respondent's monetary contributions to the purchase and development of the matrimonial property were substantially less than the petitioner's, this does not mean that her contributions were any less*

important” [Paragraph 140]. She also accepted the evidence, which even the Appellant had testified to, to the effect that the Respondent contributed to the running expenses of the household from the time she began working, including contributing to credit card repayments, groceries, and their child’s school fees expenses. The Appellant had also testified to the Respondent spending money on modernizing the home, that other than money she spent on transport costs, the Respondent spent little money on herself, with the bulk of her salary spent on ensuring the comfort and wellbeing of their family [Paragraph 140]. Carolus J, added, “I believe that during their marriage her sole purpose was to build a more comfortable house and lifestyle for the family and that she directed all her funds towards that goal.”

28. In all conscience, the trial judge appreciated that the Appellant contributed more “financially” to the marriage than the Respondent, but relied on the authority of section 20(1)(g) and the above-quoted case law to find that the Respondent rightfully was entitled to the matrimonial property by virtue of the contributions she had made to the marriage, thus accruing to the marital property. To have found otherwise would have resulted in an inequitable decision.

[291] As can be seen from the case of *Faure v Sinon*, “contributions of each party to the welfare of the family, including housework and care roles” are also relevant factors to be taken into account when determining the share of property to which a party is entitled. In that regard Andre JA referred to the much quoted case of *Freddy Chetty v Carole Emile* SCA No. 11 of 2008 (8 May 2009) in which a decision of the Supreme Court made pursuant to section 20(1)(g) of the Matrimonial Causes Act was appealed against on the basis that the appellant had contributed more than the respondent. In *Freddy Chetty v Carole Emile*, 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.

[292] After observing that the property was purchased and the house constructed from the joint moneys as far back as 1998 and the divorce made absolute in 2005, the Court went on to state that:

It is the two parties who contributed towards keeping that property intact. If one of the parties had been a spendthrift there may be no property for distribution under section 20(1)(g) of the Act. 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:

This is why it is stated that the Court shall have regard to all the circumstances of the case prior to making an Order under section 20(1)(g). What section 20(1)(g) states is that the court should have regard to all the circumstances of the case, including the ability and financial means of the parties to the marriage and make such order as the court thinks fit, in respect of any property for the benefit of the other party. (Underlining is ours). This makes clear that the court's inquiry should go beyond the role of an accountant or an auditor. An inquiry into the "ability and financial means of the parties" necessarily implies the state of the parties in this regard during the pendency of the marriage and likely state of the parties after the dissolution of the marriage. The task of the court pursuant to section 21(1)(g) as stated in previous decisions of the courts is to ensure that that upon the dissolution of the marriage, a party to the marriage is not put at an unfair disadvantage in relation to the other by reason of the breakdown of the marriage and, as far as such is possible, to enable the party to maintain a fair and reasonable standard of living commensurate with or near to the standard the parties have maintained before the dissolution.

[293] In considering the 4th ground of appeal against the allocation of two thirds shares of the matrimonial property to the respondent the Court stated:

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. The position would certainly be different if there is 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. The fact that the Appellant's business did not succeed cannot be taken against him as there is no evidence to the effect that it was due to his neglect or fault. These are circumstances that a court will take into consideration when making an order under section 20(1)(g).

[294] In *Faure v Sinon* (*supra*) Andre JA, relying on the case of *Freddy Chetty v Carole Emile* (*supra*), stated the following:

29. *The trial judge cited the case of Freddy Chetty v Carole Emile SCA No. 11 of 2008 (8 May 2009) where the court dealt with facts similar to the present case whereby the appellant sought the court's intervention on the basis that he had contributed more than the respondent. To which the court made it clear that section 20(1)(g) grants a court the discretion "to 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 circumstance so warrant." In the present case, the facts showed that the Respondent did contribute to the matrimonial property. She had met the Appellant when he had already advanced career-wise while she was a crew member. When they got married she got a job as a sales agent. She later left employment to raise their daughter for two years. Meanwhile, he did not have to take career breaks due to childbirth and to raise their child. His career progression could not be compared to hers. However, her contribution to the marriage was no less than his. During her maternity leave, she brought some salary which had been reduced, she took care of their child, and their home and provided as much support to the Appellant and their child as she could. While such contributions cannot be translated into monetary form per se, none can suggest they are any less valuable. The Appellant refers to the Respondent as a*

“lowly paid sales person” in an obvious attempt to diminish her contribution to the marriage. The law and the facts augur in her favour as can be apparent further below.

30. *The Respondent might not have made a lot of money, but in a real sense, they were in partnership in so far as their accumulated wealth should be shared between the two of them. For instance, the stay-at-home mother should have no more claim or ownership of the children, more than her executive husband who spent more time at the office and thus had little to do with actual caregiving at the time of divorce. So too should the husband have no more claim on the matrimonial property acquired using funds earned from his profession when such property was acquired during the time when the parties were together and at the time unitedly building a home together. In Freddy Chetty v Carole Emile SCA No. 11 of 2008 (8 May 2009) the court dismissed the notion of marriage partners being like business partners where careful tabs are kept of contributions into the marriage but stating that doing so would “deny marriage the love, affection and the sanctity that goes with it...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.”*

[295] Some of the properties subject matter of the petition and counter-petition concerns are co-owned by the parties namely H1345, H6465 and H6466. *Charles v Charles* Civil Appeal No.1/2003 [2005 SCCA13 (23 June 2005) which concerned property comprising a parcel of land and a house thereon which was registered in the names of both parties, lays down the principle of equality of shares as a starting point where the Court has to make a determination as the shares of the parties of property held in co-ownership. In that case the trial judge awarded the appellant a sum of SCR25,000 for “*direct monetary contribution*” and SCR100,000 for “*services*”. The Court of Appeal commented “[i]t is this award that has caused the Appellant a lot of unhappiness. She maintains to this day that she was short-changed”. The evidence in that case showed that the house was built in 1992 using a loan of R150,000 and that it bore a market value of 1.1 million rupees as at 31st January 2003 the date of judgment of the trial court, which the Court of Appeal stated “*clearly represented appreciation with the passing of time*”. The Court of Appeal found that “*by awarding a total of SCR125,000 only to the Appellant the court in effect awarded the Respondent 1.1 million rupees being the market value of the disputed house*

minus R125,000 = R975,000”. It found that “[b]y doing so the trial court erred and clearly misdirected itself in a material respect in that it restricted the Appellant’s share to her actual contributions while at the same time crediting the Respondent with a share for the whole of the appreciated value of the house and not just his actual contributions”, and that therefore “as the co-owner, the Appellant is entitled to a share in the appreciated value the house” and that “[s]imilarly if the house depreciates, she is thereby affected equally”. In light of such substantial misdirection, the Court proceeded to determine the matter afresh. It first considered the applicable law, and taking into account that the house in question was jointly registered in the names of both parties, considered the provisions of section 20(a) of the Land registration Act 1967 (Cap 107) reproduced below, and stated:

“20. Subject to the provisions of this Act –
(a) the registration of a person as the proprietor of land with an absolute title shall vest in him the absolute ownership of that land, together with all rights, privileges and appurtenances belonging or appurtenant thereto.”

In my view, therefore, both parties are vested with absolute ownership of the house in question. It follows, in my judgment, that such ownership is in equal shares as this would accord with the intention of the parties.

[296] Commenting further on the intention of the parties, the Court went on to add the following:

Bearing in mind that they registered the property in question during the height of their love affair, probabilities are overwhelming, in my view, that the parties intended co-ownership in equal shares. In this regard, it must always be borne in mind that what matters is the intention of the parties at the time when they registered the matrimonial property and not at the time of divorce.

[297] The Court then considered Article 815 of the Civil Code and stated:

Article 815 of the Civil Code (Cap 33), in my judgment, also supports the proposition that the Appellant as co-owner is entitled to an equal share of the matrimonial house in question as a starting point. That Article reads as follows:-

“Co-ownership arises when property is held by two or more persons jointly. In the absence of any evidence to the contrary it shall be presumed that co-owners are entitled to equal shares.”

It concluded that the Respondent’s evidence fell short of rebutting the presumption of co-ownership of the house by the parties.

[298] The Court then proceeded to consider section 20(1)(g) of the Matrimonial Causes Act, and stated:

20. ... The use of the word "may" in this section confers a discretion on the court to make an appropriate order of settlement of matrimonial property. That, as it seems to me, however, is not an arbitrary discretion. On the contrary, it is a judicial discretion that must be exercised after due consideration of all the relevant factors. Although such factors are not, and need not be circumscribed, it is nevertheless pertinent to bear in mind that the court is enjoined by s. 20 (1) (g) of the Act to take into account the ability and financial means of the parties to the marriage "for the benefit of the other party" thereof.

The principle underlying this section is, in my Judgment one of equity designed, as it does, to ensure that no party to a settlement of matrimonial property shall remain destitute while the other party drowns in a sea of affluence so to speak. In this regard, it is salutary to bear in mind what this court said in Renaud v Renaud SCA No. 48 of 1998 namely:-

"The purpose of the provisions of these subsections (i.e. 20 (1) (g) of the Act) is to ensure that upon the dissolution of the marriage, a party to the marriage is not put at an unfair disadvantage in relation to the other by reason of the breakdown of the marriage and, as far as such is possible, to enable the party applying to maintain a fair and reasonable standard of living commensurate with or near to the standard the parties have maintained before the dissolution."

[299] The Court went on to consider similar decided cases namely *Edmond v Edmond SCA No.2 of 1996*, in which the Court of Appeal upheld the Supreme Court order that the matrimonial home of the parties be held in equal shares; *Florentine v Florentine SLR (1990)141* in which the same approach was taken by the Supreme Court; and *Lesperance*

v *Lesperance* SCA No.3 of 2001 in which the Court of Appeal ordered that the matrimonial property be held in equal shares. In regards to the latter case it stated:

22. In *Lesperance v Lesperance SCA No 3 of 2001*, this Court laid down the principle that there must be equality of treatment in cases based on similar facts and thus ordered the matrimonial property in question to be held by the parties in equal shares. That remains a sound principle. One must, however, guard against elevating the principle of equality above the statutory discretionary power given to the courts in s. 20 (1) (g) of the Act to make appropriate matrimonial property settlements according to the justice of each individual case. This is more so since in practice it is, in my judgment, hard to imagine any two cases being exactly "similar" or identical.

On this approach therefore, I would lay it down as a general principle that equality of shares in cases such as this one must obviously be considered as a starting point for the Court in making a determination under s. 20 (1) (g) of the Act.

Incidentally, this Court in *Lesperance v Lesperance* ordered that the matrimonial property in question be held in equal shares. This, despite the fact that the property in question had been purchased by the respondent husband "in his own name and with his own monies". He had financed the construction of the house from his own savings. The contribution of the appellant wife was confined to raising the children, maintaining the family and helping physically in the construction of the house while at the same time providing secretarial assistance to the respondent husband who operated an electrical business until he employed a full-time secretary.

[300] After considering the special circumstances of that case, *inter alia* that the house was only part of the entire matrimonial property, that the respondent had worked for a longer period and earned more than the appellant and therefore had contributed more and more regularly to the matrimonial property, whereas the appellant's contribution was minimal, and that the parties had decided that all the movable property other than a motor vehicle should go to the appellant, the Court in *Charles v Charles* concluded that the most equitable adjustment order to make was that the parties' share in the house in question should be should be 65% for the respondent and 35% for the appellant

representing an increase 23.64% from the award granted by the trial court to the appellant.

Entitlement of the parties to the properties

[301] This Court will now proceed to determine the share, if any, to which each of the parties are entitled in each of the properties subject matter of the petition and counter-petition, in light of the applicable law and principles as set out in the case-law, and the evidence adduced in respect of the different properties.

Parcel H1346 with house thereon (Majoie)

[302] This property does not feature in Mr Pillay's petition. In her counter petition, Ms Lablache claims a half share in the property. Parcel H1346 is currently registered in the names of Kimberley and Inesh Pillay with the usufructuary interest therein registered in favour of Mr Pillay. The property was transferred to its current proprietors by Mr Pillay on 23rd July 2016, although in the absence of any documentary evidence to that effect it is not possible to ascertain exactly when the land was acquired by Mr Pillay. In spite of some discrepancies in the evidence of the parties, it appears that this was in 1981 or thereabouts either shortly before or after they met. It is common ground that the parties have been in a relationship since around 1981 before marrying each other on 30th August 2003.

[303] It is not disputed that Mr Pillay purchased and solely paid for Parcel H1346 before they even started living together. In any event, at the hearing, Ms Lablache waived any claim to the land comprised in title H1346. Her only claim therefore lies in respect of a half share in the matrimonial home located on H1346 and the other buildings which are constructed partly on H1346 and partly on H10786. As previously stated I refer to the house on H1346 as the matrimonial home as it is the home that the parties shared prior to and after their marriage and where they brought up and lived with their children up to the time they separated. Ms Lablache does not base her claim on direct contributions to the construction of the matrimonial home, but rather on her monetary contributions to furnishing the house and to the family and household expenses as well as her time and effort spent on taking care of the home, the family and the children for all the years that

she has lived in the marital home. She claims to have moved in the matrimonial home when she returned from Greece in 1988 and to have moved out in 2016, which is not disputed by Mr Pillay, hence she would have been living in the matrimonial home for 28 years, during which time the parties' three children were born.

[304] Mr Pillay testified that he built the matrimonial house with a loan from the Credit Union which he solely repaid. In cross-examination he stated that he had already started building the house when the parties met, i.e. even before Ms Lablache left for Greece, and that the ground floor was completed in 1986 while she was in Greece, at which point he moved into the house. Ms Lablache testified that the ground floor was constructed by Mr Pillay while she was away in Greece from 1984 to 1988 and financed solely by him. She does not claim to have contributed to the construction costs of the ground floor. Both parties agree that when Ms Lablache first moved in when she returned from Greece, only the bedroom occupied by Mr Pillay was furnished with a bed and had curtains, and that in addition the house contained the bare necessities to enable Mr Pillay to live there, namely a fridge, a stove, kitchen utensils, two plates and two mugs. In cross examination, Mr Pillay admitted that Ms Lablache contributed 50/50 to buy household items such as towels, linen, curtains and appliances, and to pay for food and household expenses but denies that she contributed to buying furniture for the house which he stated he did himself. Ms Lablache on the other hand claims that with the savings she had made from the $\frac{2}{3}$ of her salary that she was paid while in Greece and the increase in her salary upon her return, she also contributed to buying furniture for the house as well as soft furnishings. Given that the house had remained unfurnished since its completion, except for what was strictly necessary for Mr Pillay to live there, it seems highly probable that having spent his funds on constructing the house, he was unable to furnish it and that Ms Lablache contributed to the same.

[305] Both parties also agree that the top floor of the house was constructed while the parties were living in the house. Under cross-examination Mr Pillay stated that he not only funded the construction of the top storey but carried out the construction work with the help of some workers, for whom he even cooked food, without any help from Ms Lablache. He claims that he funded the construction of and furnished the top storey with

money he earned over time. Ms Lablache testified that the top storey of the house was added after the parties got married in 2003. While she admitted that she did not contribute to the actual construction costs of the second storey, she stated that she helped to buy furniture, provided curtains, bedsheets, towels, and contributed to household and family expenses while construction was ongoing. In her words *“For instance let us say he was the one who put the windows and doors, etc, I was helping to buy bedsheets that we need for the bed, the towels, clothes for the children, utensils for the house, stuff like that, I help on this side and he helps on the other side”* (Pg 19 – 17 proceedings of Sept 2020). Ms Lablache also testified that being a fashion and textile designer as well as a seamstress, she was not only responsible for soft furnishings for the home such as curtains and bedsheets but also for the children’s clothing (including school uniforms), for which she provided the fabric and other materials and also did the sewing.

[306] Both parties agree that they both took care of the children. Ms Lablache further claims that she was the one who helped them with their homework and with their studies, took them to school and sorted out any issues arising at school. I believe that she was very much involved in her children’s lives up to the time that the parties marriage fell apart regrettably creating a rift between her and the children who at that time I note were no longer very young and whom it appears took their father’s side. As for her financial contributions to their education although she has only provided evidence of some of the school fees that she paid for Inesh (from 2014 to 2015 when Inesh was 11 and 12 respectively), Mr Pillay has corroborated her evidence that she paid for Kimberley’s school fees while he paid for Iouanna’s, and that when Inesh started school she paid his fees and he took over paying Kimberley’s fees, as Iouanna had finished school by then. Ms Lablache admits that she stopped paying Inesh’s school fees when the parties separated in 2016, on the basis that Mr Pillay was spending money on his partners and could therefore afford to pay for his son’s education. I do not find this a valid reason as both parents are responsible for providing for and maintaining their children despite the relationship of the parents ending. At the time Inesh would have been 13. To her credit, she did pay maintenance for Inesh at least for a while and maintained a bank account in his name which had a credit balance of SCR23,216 as at 31st August 2020. I further note that the failure of her business and her reduced circumstances would have rendered it

difficult for her to continue maintaining Inesh as opposed to Mr Pillay who not only still had his electrical contracting business but was also pocketing rent from the property on V1332.

[307] Ms Lablache also testified that she did all the cleaning, laundry, ironing and household chores with little help from the children who were involved in their studies. This is accepted by Mr Pillay although he claims that both he and the children helped out. Ms Lablache also stated that Mr Pillay mostly did the cooking while she occasionally prepared certain dishes. She further claims that on Mr Pillay's occasional work trips overseas (every two to three months) she was left to take care of the children and the home.

[308] Mr Pillay initially claimed that Ms Lablache could not have made the monetary contributions she claims to have made because she was not earning enough to do so, while he earned SCR28,000 to SCR35,000 per month from his work as an electrical contractor. However, he then accepted that from the time they met up to 2008, Ms Lablache had been employed with the Ministry of Education and earning a salary, and that furthermore from 1995 she was running her own business from which she earned additional income, but stated that he did not know what she did with her money as he was the one who bore all the household expenses and also paid for the phone and utility bills.

[309] In regards to her earnings, Ms Lablache testified that at the beginning of their relationship, as a supply teacher she had only been earning SCR700, but as she received training and rose through the ranks she eventually earned in excess of SCR10,000. I note that according to the Certificate of Employment she produced (Exhibit 11) her last gross salary as at 1st February 2008 was SCR74,700 per annum i.e SCR 6,225 per month. This accords with the salary advice/pay slips she produced for the year 2002 which shows that for the second half of that year her gross earnings amounted to SCR6,325 (inclusive of salary and responsibility allowance) and her net income was SCR5,983.75, taking into account that in 2002 she was occupying the position of Senior Instructor which she had held from 1st January 2001 and continued holding until 1st February 2008 when she resigned and ended her employment with the Ministry. Ms Lablache also claims that her

gratuity payment of SCR30,000 for 25 years service as a teacher which was paid in March 2004 as shown by Exhibit D2, was used to pave the front of the matrimonial home. She denies Mr Pillay's claim that it was used for travel or her business. She also stated that part of the sum of SCR147,788.08 paid to her in 2008 as terminal benefits as shown by Exhibit D3 was invested in the matrimonial home and spent on the children and the family, which is denied by Mr Pillay, and the remainder invested in her business. This Court has no reason to disbelieve Ms Lablache as to how she spent her gratuity and benefits. Give that she has been living in the matrimonial home since 1988, it would have been strange for her to have spent no money at all on it.

[310] She further testified that from 1995, while she was still employed with the Ministry of Education, she also started her own business Mangouya Studio for the production of tourism related products which were sold at various tourism establishments and other outlets as well as Bazar Labrinn, and from which she earned additional income. She also supplied products other than those she produced herself and provided services such as printing of logos on t-shirts. Exhibits D19, D20 and D21 are evidence of her earnings from that business for the years 2012, 2013 and 2014 while Exhibit 22 shows comparisons between income from different outlets to which she supplied her products for the years 2011 and 2012. After that whilst she was still employed with the Ministry of Education, Ms Lablache launched Mangouya Fashion – a textile design and fashion business - from which she claims to have earned SCR200,000 to SCR300,000 per year. In 2002, she launched a fashion show group from which she claims to have earned SCR10,000 to SCR12,000 per month. She claims to have spent her earnings from her various businesses on the businesses themselves as well as the family's upkeep. Although she has not produced any evidence of her earnings from Mangouya Fashion and the fashion show group, Mr Pillay has admitted that she did have those businesses although he claims that they were not as lucrative as she was making them out to be: for instance he claims that she was unable to pay the rent for the space she occupied in the building on V1332, that he had to purchase her sewing machine when she started her business, and also help her set her business up. In that regard Ms Lablache testified that she moved out of the building on V1332 to the studio on V1346 so that they could rent the premises to another tenant and obtain more rent to pay off the loan borrowed for the purchase of

V1332 and renovation of the building thereon, which in my view is not only a perfectly plausible explanation but also makes business sense, as she did not have to pay rent for the studio. She has not denied that Mr Pillay supplied her with her sewing machine for her business but explained that he was in the business of importing industrial sewing machines and that she paid him for it. As for helping her set up her business, he might very well have provided her with some assistance although he has not brought any evidence of the sums he claims to have given her for the same, but I do not believe for one minute that she had no means to set up her business, in light of the proof she has brought of her earnings. The fact that she eventually left the security that employment provided to launch herself full time into her business is also evidence that the business was profitable one.

[311] Miss Lablache claims that after leaving the employment of the Ministry of Education, she worked full time in her businesses which she now operated on a larger scale, and which flourished, so much so, that the businesses made more money than when she had been teaching at the same time. She invested the money in the studio on V1346 and also used it to promote and expand the business. At the beginning she had been operating her business from the studio, but from 2009 to 2011 occupied the building on V1332 at English River/ Castor Road, before returning to the studio until 2013 when she moved to a shop at CODEVAR on SENPA premises. However due to the COVID pandemic which resulted in the closure of her businesses which relied primarily on sales to tourists, she lost everything and had to rely on Government assistance for the duration of the pandemic. It would seem that Ms Lablache has now attempted to some extent to resurrect her business but faces difficulties because she no longer has any reliable source of income and she does not have appropriate premises at which to carry on her work. She states that she had to stop using the studio when the parties separated in 2016, because of numerous malicious acts carried out by Mr Pillay to prevent her from using the studio which she now only uses as storage. She now does printing work at the house she occupies but can only do so in small quantities because of limited space and facilities.

[312] Ms Lablache on her own admission, made no contributions to the construction of either the ground or first floor of the matrimonial home. However I find that Mr Pillay has

attempted to minimise and misrepresent her contributions, with a view to depriving her of her rightful share in the matrimonial home, and ensuring that she walks away empty handed after 28 years together. I am confirmed in that view by the derisive offer he made to her of his half share in parcels V6465 and V6466, the paltry sum of SCR500,000.00, and the ISUZU truck Registration No. S24137, taking into account the total value of all the properties acquired during the relationship and marriage of the parties. I note that V6465 and V6466 are vacant parcels currently accessible only by a footpath with no motorable access road, which would be costly to make, and no right of way except over V1345 which would belong to Mr Pillay in terms of the offer. Furthermore the ISUZU truck is registered in Ms Lablache's business' name and being used by her, and she has explained that Mr Pillay's contribution of SCR45,000.00 to the purchase price of the vehicle was obtained from rent for the building on V1332, which she claims she is entitled to a share of which she has never received (except for the SCR45,000). Mr Pillay's offer is a perfect example of what section 20(1)(g) is designed to prevent as explained in *Charles v Charles*, namely that a "party to a settlement of matrimonial property shall remain destitute while the other party drowns in a sea of affluence so to speak".

[313] I find that Ms Lablache has sufficiently established that she earned enough to contribute to furnishing the house, and for the reasons given I believe her claims that she not only purchased some furniture for the house but also provided all the soft furnishings such as curtains, linen, bedsheets and towels, as this is in her line of work. I also believe that she contributed to family and household expenses and played an important part in taking care of the children and the home especially as Mr Pillay not only had his electrical contracting business to run, but was also involved in numerous construction projects (i.e. the top storey of the matrimonial home, the studio, the bedsitters and apartments on top of the studio etc.). Furthermore if as Mr Pillay claims, he built the 2nd storey with money that he earned over time, it is only reasonable to believe that he could only have set aside that money because Ms Lablache was contributing towards other expenses. Mr Pillay claims that he paid for all the utilities such as electricity and water, even for the studio which Ms Lablache used for her business without contributions from her. She explained that the studio did not have a separate meter and that only one bill was issued for the

matrimonial home and the studio and were thus paid together. She further stated that her contributions to the household expenses would also cover the utility bills including the studio's. I find that even if she may not have specifically paid for the utility bills, she did make substantial contributions to the household from her earnings which would have covered the same. As for not paying rent for the studio where she was carrying out her business, as she rightly points out the whole family was benefitting from the income from the business that she was carrying out there, and in any event it was part of the matrimonial property, in which she had also made certain investments, and therefore it would be unreasonable to expect her to pay such rent. As stated I also believe Ms Lablache's claim that she paid for paving outside the matrimonial home with her gratuity and that part of her terminal dues was invested in the matrimonial home and went towards the family while the rest was invested in her business.

[314] In addition Ms Lablache gives the impression of being a strong, self-assured woman with a certain amount of pride. She does not appear to be the kind of person who would be content to rely on another person even her own husband, to provide and take care of her every need. This is evidenced by the fact that she started her own business while being employed as a teacher. She also strikes me as a very hard working person and astute entrepreneur, who not only made enough income to contribute to her home and family but also to re-invest in and expand her businesses, and it is unfortunate that her thriving businesses had to shut down because of the Covid pandemic.

[315] The facts also speak for themselves. When Mr Pillay built the ground floor of the house, the parties were already in a relationship which they maintained throughout Ms Lablache's four-year absence as evidenced by the fact that he visited her in Greece. Upon her return in 1988 she moved in with him straightaway and they co-habited for 15 years and had three children before getting married in 2003, after which they extended the house to add the first floor where they continued living until their separation in 2016 – about 32 years after they met. Had Ms Lablache been the selfish and self-centred person who spent all her money on herself and her business without making any contributions to the family and the household expenses, as Mr Pillay would have the Court believe, it would have been very surprising indeed for the relationship to have lasted that long.

Granted that Mr Pillay might have been very much in love in the initial stages of the relationship so as to be blinded to the alleged shortcomings of his partner, but having observed him in court he does not strike me as the sort of person who would after 15 years of co-habitation go on to marry the kind of person he is painting Ms Lablache to be and continue living with her for another 13 years. Mr Pillay is no pushover.

[316] It would seem from the testimony of the parties that their relationship and marriage was a partnership in which each one contributed whatever they could both in terms of money and effort, with the ultimate aim being the wellbeing and welfare of the family. Each party worked hard, made sacrifices and pooled their resources and did whatever they could to achieve that common goal. Their income was used to provide for their family, to pay for their children's education, to meet the expenses of running their household and to invest in properties which they acquired and developed, all of which was directed towards the welfare of the family. Both parties also assisted each other in their respective businesses where necessary. For example both parties accept that Mr Pillay helped with the transportation of models for Ms Lablache's fashion show business. It is also possible that he helped her in other ways in her businesses, although I believe that Ms Lablache was a capable business woman and astute entrepreneur who was able to run a profitable business. Similarly Ms Lablache because she worked in the textile industry provided him with contacts in the industry when he was involved in the importation of industrial sewing machines. She has also brought evidence of her involvement in a company he set up and which he claims is no longer operational, which renders plausible her testimony that she helped him out especially with the paperwork in his electrical contractor's business. In these circumstances, Mr Pillay cannot now be heard to say that Ms Lablache is not entitled to a share in the matrimonial home because she has not contributed to its construction, and it is unfortunate that with the end of the marriage, he now seeks for Ms Lablache to walk away empty handed after 28 years living and raising three children together, and having made substantial investments not only in the matrimonial home but in numerous other properties. In view of the above, I find that, although Ms Lablache did not contribute to the actual construction of the matrimonial home, she made substantial contributions to the family home, the upkeep of the family and the household, both monetarily and in kind.

[317] Section 20(1) enjoins the Court to have regard to “*all the circumstances of the case, including the ability and financial means of the parties*” when determining applications for matrimonial property adjustment. The Court in *Esparon v Esparon* (supra) set out factors the court may have regard to when considering “*all the circumstances of the case*” namely the standard of living of the spouses before the breakdown of the marriage, age of the parties, duration of the marriage, physical and mental disability of either party, contributions made by each party to the welfare of the family, including housework and care roles, and any benefit which a party loses as a result of the divorce. In that regard, it weighs heavily in the balance that Ms Lablache, having invested all she had earned during 28 years of co-habitation and marriage in the family and property acquired during the marriage as well as her business, would have to start afresh at the age of 59 years old, especially bearing in mind that her businesses have failed through no fault of hers because of the Covid pandemic. After having provided for her family for so long when she was in a position to do so, she is being abandoned and left to fend for herself when she is down and out, and no longer has the advantage and energy of youth on her side. It is also pertinent that she enjoyed a certain standard of living during the time she was cohabiting and married to Mr Pillay during which time she was also earning a substantial income, which she no longer can because of the change in her circumstances through no fault of hers. In that regard, in addition to her reduced earning capacity, this Court takes into account that she is living in a house that is co-owned by the parties which she states is in bad condition and requires extensive renovation. Furthermore even if she wanted to she cannot carry out her business on a larger scale for want of space at the premises which she is now occupying.

[318] In light of the all the above and on the basis of the principles set out above especially in the cases of *Boniface v Malvina* which is authority that a spouse may be entitled to a share of the other spouse’s property even if it was acquired by the last mentioned spouse who erected the building thereon prior to the marriage with no contributions from the first mentioned spouse, as well as *Faure v Sinon* and *Freddy Chetty v Carole Emile*, both of which emphasise the importance of contributions to “*the welfare of the family, including housework and care roles*” when making a determination of the share to which a party is entitled, I hold that Ms Lablache is entitled to a share of the matrimonial home.

Bearing in mind that Ms Lablache contributed substantially both in monetary terms and in terms of taking care of the home and family, I consider a half share of the value of the matrimonial home to be a fair assessment of the share to which she is entitled.

[319] To calculate the half share, we turn to the valuations: Given that Ms Lablache is not claiming a share of the land, only the value of the structures thereon will be taken into account. Mr Accouche's valuation (Exhibit P21) contains valuations of the main house (SCR5,422,455.86 minus depreciation SCR2,717,600 = SCR2,704,855.86), stone retaining walls (SCR731,250.00 minus depreciation SCR341,250 = SCR390,000) and reinforced concrete pavings (SCR56,392.00) the total value of which comes to SCR3,151,247.86.

[320] Mr Valentin (in Exhibit D31) has valued the dwelling house at SCR2,248,704 (SCR2,560,464 minus depreciation SCR311,760). He has valued the other developmental works namely the retaining wall at SCR756,000, concrete paving at SCR33,000 and the boundary wall at SCR40,970 amounting to a total of SCR830,270. The total value of the all the structures is SCR3,078,974.

[321] The difference between the two valuations (SCR3,151,247.86 and SCR3,078,974) is SCR72,273.86. It is to be noted that Mr Accouche had been unable to validly comment on any differences between the two valuations or to defend his own valuation in light of Mr Valentin's as he had not seen Mr Valentin's reports, whereas the latter had the opportunity to compare Mr Accouche's reports to his own. It also bears reminding that Mr Valentin had stated that it is normal who have a difference between valuations made by different quantity surveyors of up to 15%, that he respects Mr Accouche as a quantity surveyor and his work, and that by commenting on his valuations is not attempting to cast doubt on his competence as a quantity surveyor. Mr Valentin questions Mr Accouche's depreciation of the house by SCR2,717,600 standing beside his own lower depreciation of SCR311,760, but it is noted that Mr Accouche's valuation of the house before depreciation was much higher at SCR5,422,455.86 (which was not commented on by Mr Valentin) whereas Mr Valentin valued the house at SCR2,704,855.86 before depreciation so that the valuations of the two houses are not that far apart after depreciation: Mr

Accouche's valuation of the house after depreciation came to SCR2,704,855.86 whereas Mr Valentin's came to SCR2,248,704 i.e. a difference of SCR456,151, which I find to be an acceptable difference.

[322] As stated Mr Accouche has valued the house and structures/developmental works on H1346 at SCR3,151,247.86 and Mr Valentin at SCR3,078,974. The difference between the two can be resolved by using the average between the two, that is SCR3,115,110.93. The entitlement of each party of half that sum would amount to SCR1,557,555.46.

Structures/developments encroaching on Parcel H10786

[323] Although no documentary evidence of the same has been provided, Mr Accouche in his valuation report dated 1st December 2020 which was compiled based on inspection carried out on 5th November 2020 (Exhibit P22) stated that "*... at time of this exercise the proprietor of H10786 was Mr. Walter Patrick Pillay ... who recently purchased on the 31st March 2020, from prior owner Mr. Simon Daniel Larame.*". In his prior report dated 27th February 2019 (Exhibit P21) based on inspection carried out on 4th February 2019, he had stated that "*the main house and retaining walls [on H1346] partially encroaches on the Government land parcel no. H10786*" but admitted that this was wrong and he had only assumed that the land belonged to the Government because of its size. Although Counsel for Ms Lablache attempted to discredit his valuations on that basis, I do not find that this lapse on his part would in itself affect his valuations. Given that Mr Pillay purchased H10786 after the separation and subsequent divorce of the parties, and after the filing of the petition and counter-petition, it is my view that Ms Lablache is not entitled to a share thereof. In any event she has made no claim to the said parcel. However I find that she would be entitled to a share in the studio which is constructed partly on H1346 and partly on H10786 and the other structures located on H10786 namely the partially completed apartments/residential developments, as they were constructed during the time that the parties were co-habiting and married, and on the basis of her contributions to the family and household both monetary and in kind, as well as to direct monetary contributions to such developments.

[324] In her counter petition, Ms Lablache avers that Mr Pillay built a store while she was studying in Greece, that upon her return they built another level on top of the store for her to use as studio, and that in 2020 they added yet another level which she used as a studio/workshop. She testified that she contributed to the construction and finishing of the studio (windows and bathroom fixtures), as well as on to renovation and repairs, with income she earned as well as loans. She also testified that after she moved out of the matrimonial home, she continued using the studio but eventually had to stop doing so because of the malicious acts of Mr Pillay. She now only uses the place for storage of her materials. She has brought evidence of two loans of SCR80,000 and one of SCR250,000 which she states represent her investments in the studio. Furthermore, Ms Lablache has shown that from the time she met Mr Pillay she was earning an income first from employment, then both from her employment and business until she resigned from employment and worked full time in her business.

[325] As with the matrimonial home on H1346, Mr Pillay makes no mention in his petition of the developments which have encroached on H10786, although he addresses them in his testimony. He stated that he built the two storey studio after construction of the main house which he funded with income he earned as an electrical contractor. His testimony supports Ms Lablache's evidence that only one floor was first constructed and later extended to include a second floor. He denies that Ms Lablache contributed to the construction costs of the studio or to extend or upgrade it. As for the other incomplete residential developments which he describes as 2 bedsitters and two apartments, he claims to have started construction thereof twenty years ago and explains the delay in their completion by the fact that he is financing their construction from his earnings. Insofar as the residential developments are concerned, it is clear from the valuation report of Mr Valentin (Exhibit D31 at para 3.2.2 on pg 4) as well as pictures of the same in both Exhibit D31 and P22) that while the studio is an older structure which was built at the most a few years after construction of the matrimonial home, the residential developments are more recent and could not have been built as far back as 20 years ago. The obvious conclusion is that Mr Pillay is lying about the source of financing of the developments to make the Court believe that he is solely responsible for the same. Furthermore in his cross-examination in regards to the building on V1332, he stated that

construction of the two apartments and bedsitters were paid from rental of that building, which casts doubt on the reliability of his testimony.

[326] Mr Pillay also came up with a lot of excuses to justify his claim that the loans borrowed by Ms Lablache were not invested in the studio. I do not believe him at least insofar as it concerns the loan of SCR250,000. He would have this court believe that despite the loan agreement/ letter of offer (Exhibit D9) clearly stating that the purpose of the loan of SCR250,000 was to upgrade the studio, she had used it to purchase materials for her business. The loan was granted in 2014, and it is perfectly plausible given the time that had elapsed since the studio was built that it would require some renovation or upgrading by 2014. The matter is not so clear insofar as it concerns the two loans of SCR80,000 granted in 2012 and 2016 respectively, and evidenced by Exhibits D8 and D10 i.e. letters of offer in which the purpose of the loans are stated to be for working capital and business expansion. Nevertheless it is clear that the loan of SCR250,000 was used for the studio, and bearing in mind Ms Lablache's monetary contributions from her earnings, as well as her contributions to "*the welfare of the family including housework and care roles*" it is my view that both parties contributed to the construction thereof.

[327] As for the residential developments, although not much has been said in regards to the contributions, I take note that they were constructed during the time that the parties were married and that Ms Lablache contributed monetarily to the family and household expenses as well as in kind by taking care of the house and children, which in turn permitted Mr Pillay to spend his earnings on the various developments he undertook. On that basis, I find that she is entitled to a half share in the value of the studio as well as the residential developments.

[328] Mr Accouche valued the developments on H10786 at SCR2,279,362 and Mr Valentin at SCR2,726,480. Mr Valentin however stated that he would defer to Mr Accouche's valuation as the method used by the latter gave a more accurate valuation. The half share to which each party is entitled therefore amounts to SCR 1,139,681 (i.e. half of SCR2,279,362).

H1345 with a semi-detached house thereon (Majoie)

[329] H1345 and the original house thereon was purchased by the parties from the Government for a sum of SCR301,000.00 on 24th January 2003, a few months before the parties married and when they were living together. The property is registered in their joint names. The house was subsequently converted into a semi-detached house which is currently being occupied by Ms Lablache on one side and by Mr Pillay's mother on the other side. Given that the property is registered in the joint names of the parties, the presumption of ownership in equal shares as per *Charles v Charles* (supra) therefore comes into play, unless the contrary can be proved.

[330] Mr Pillay claims that he solely repaid the loan of SCR301,000.00 for the purchase of the property from his earnings and that the conversion of the house into a semi-detached house was also financed by him from his earnings. He denies that Ms Lablache contributed to either, and also denies that the parties took a loan of SCR600,000 to finance the conversion of the original house into a semi-detached one, as averred by Ms Lablache into her counter-petition. Mr Pillay prays for an order for Ms Lablache to vacate the property and for him to be given full ownership thereof.

[331] In her testimony, Ms Lablache admits that Mr Pillay borrowed a loan to purchase and renovate the property, and that during the time that the house was being converted into a semi-detached house he solely repaid the loan with no contributions from her. However she claims that at the time she was contributing to family and household expenses which permitted him to make the loan repayments. She also claims that after the house had been converted into a semi-detached one, it was rented out and the rental money used to continue repaying the loan and to refund Mr Pillay the money he had spent on repaying the loan. According to Ms Lablache although the property is registered in the names of both parties, they were only able to purchase it because it was property forming part of the land bank which she was eligible to purchase as a returning graduate and which Mr Pillay would have been unable to purchase on his own as he already owned land. This is denied by Mr Pillay. Ms Lablache further claims that she looked for tenants for the semi-detached house for which the rent was used to repay the loan. Ms Lablache seeks for the Court to award her full ownership of H1345 and the house thereon, together with two vacant neighbouring plots namely H6465 and 6466.

[332] Exhibits P3, P3B, P4, P4(a) and P4(b) appear to show that two loans were borrowed by Mr Pillay relating to the purchase of H1345 – P3 and P3B relate to a sum of SCR200,000 which was repaid in full by deductions from his bank account, while P4, P4(a) and P4(b) relate to a sum of SCR301,000. There is no evidence that a loan of SCR600,000 was borrowed by the parties as claimed by Ms Lablache. Although the loans may have been repaid by Mr Pillay as he claims, it is pertinent to note that Ms Lablache made other contributions to the family and household expenses so that he could make the loan repayments. Furthermore she has brought evidence of the house being rented out in November 2003, 10 months after it was purchased, which not only negates Mr Pillay’s claim that the conversion of the house into a semi-detached took 5 years after which it was rented out, but also makes it likely that the rental income was used to repay the loan. I also believe that Ms Lablache played an important part in obtaining tenants for the house and that she was instrumental in making it possible to acquire the land which formed part of the land bank.

[333] In light of the above I find that the presumption of co-ownership has not been disproved and that co-ownership was intended by the parties. This is further confirmed by what Mr Pillay said when it was put to him in cross-examination that it was unfair on his part to come before the Court to seek sole ownership of the only two properties co-owned by him and Ms Lablache (H1343 and H1345) after dissipating all the other properties in his sole ownership from the matrimonial pool. He stated *“When I bought that land I never expected that one day we will get a divorce. I expected that we would live [together] until we die. It wasn’t the case, and for what happened to my children that is why I transferred the property to them and left the other two in my name. Because there was her name on it, and I wouldn’t be able to do it without her”* (Pages 18 and 19 of proceedings of 18th September 2020 at 1.45). His words show that the intention of the parties was joint ownership of those parcels, and in my view also of the other parcels that he disposed to his children. For these reasons I find that the parties are therefore each entitled to a half share of H1345 and the semi- detached house thereon.

[334] Mr Accouche has valued H1345 and the building thereon at SCR3,367,080.68 (Exhibit P20) whereas Mr Valentin has valued the same property at SCR3,658,967 (Exhibit D30),

with a difference of SCR291,886.32 between the two valuations. Mr Valentin stated that this difference arose mainly from the differences between their valuations of the land, which Mr Valentin had valued at SCR744,919.25 and Mr Accouche at SCR620,896.00, making a difference of SCR124,023.25. Mr Valentin attributed this difference to the depreciation of the land by Mr Accouche on the basis that the right of way registered on that plot as an encumbrance could deter prospective buyers, and which Mr Valentin had not considered as a depreciating factor. In fact he opined that the right of way was beneficial to the property because it is taken into account when calculating the size of the land, which in turn determines the usable surface area of such land, so that even if the right of way cannot be built on it adds to the usable surface area. Both arguments appear to have some merit, but the Court not being an expert in the subject is loath to interfere with Mr Accouche's valuation especially given that he had no opportunity to comment on Mr Valentin's. In the circumstances this Court will take the average of the two valuations to be the value of the property (land and buildings), which amounts to SCR3,513,023.84. The parties' entitlement of half of that sum would amount to SCR1,756,511.92.

Titles H6465 and H6466 (subdivisions H1343) (Majoie)

[335] Titles H6565 and H6466 which are subdivisions of H1343 (as shown by the cadastral plans of the properties attach. to Exhibit P19), are co-owned by the parties, who purchased them from the Government for a consideration of SCR100,000 on 4th August 2005, during the marriage of the parties (as shown by Exhibit P5 – transfer deed for H6565 and H6466). One of the conditions of the transfer was that “[t]he transferees shall amalgamate [H6565 & H6466] with Parcel H1345”. These two parcels are undeveloped and abut each other. Parcel H6466 has a common boundary with H1345 which is co-owned by the parties and currently occupied by Ms Lablache. There is currently no motorable access road to the properties which can only be accessed through a footpath on H1345, although a 3m right of way over H1345 has been demarcated on the cadastral plans of H6565, H6466 and H1345 (attach. to Exhibit P19 and P20). In his valuation report (Exhibit P19) Mr Accouche states that given the topography and rock features on H6565 and H6466 it will be costly to build a motorable access.

- [336] In terms of his petition, Mr Pillay seeks to be awarded sole ownership of parcels H1343 (the parent parcel of H6465 and H6466) and H1345, and for Ms Lablache to vacate H1345 which she is currently occupying and for him to be granted occupancy thereof. As previously noted he refers to H1345 as the matrimonial home of the parties but the Court has made a finding that it is the house on H1346 which is the matrimonial home and not the one on H1345. In his affidavit in support of the petition he avers that he solely financed the purchase of H6465 and H6466 with a loan of SCR100,000 borrowed from the MCB and should be declared as the sole owner thereof.
- [337] Ms Lablache, on the other hand seeks to be awarded sole ownership of H6465 and H6466 in addition to H1345 and the house thereon, in terms of her counter-petition. This is in addition to *“a half share in all the properties [belonging jointly and solely to and including those disposed of by the Counter-Respondent to his children]”* and in the alternative to sole ownership of V1332 and the building thereon. In her supporting affidavit, at paragraph 17, she avers that after acquiring H1345 from the Government, in 2005 the parties applied to purchase H6465 and H6466, which was transferred on their names.
- [338] The exhibits produced show that both of them were involved in the purchase of the property from Government. Although Exhibits P5(d), (e) and (f) show that the application to purchase H1343 from Government was made by Mr Pillay in 2003 as they either refer to or are addressed to him, Exhibits D4 and D5 show that Miss Lablache was also involved in the process.
- [339] Mr Pillay testified that the purchase of the plots was financed by a loan from the MCB. Exhibits P5(b) and P5(c) show that he applied for and obtained the loan in the sum of SCR100,000 in 2004. Ms Lablache admitted in her testimony that the loan was borrowed by Mr Pillay. She also accepted in cross-examination that she did not contribute towards the payment of the purchase price of the properties which was done by Mr Pillay, but stated that she contributed to their acquisition by her contributions to the family generally.

[340] According to Ms Lablache the parties purchased the two parcels as the only access to H6465 and H6466 is over H1345 which is registered in the name of the parties and H1346 which is registered in the name of Mr Pillay. It is to be noted that in fact access to H1346 (belonging to Mr Pillay) is provided by a 3m right of way over H1345 (co-owned by the parties) which provides access to both H1345, H1346 as well as H6465 and H6466. However, the motorable access road used by H1345, H1346 does not reach H6465 and H6466. Insofar as it concerns H1345, the motorable access does not reach the house on the property which has to be accessed by steps.

[341] According to Mr Pillay, he offered Ms Lablache his half share in H6465 and H6466, the sum of SCR500,000 as well as the ISUZU truck that she drives, in settlement of the present matter. Ms Lablache stated that had she accepted the offer, he would have remained in ownership of H1345 and been in a position to refuse her access to H6465 and H6466, hence the reason why she refused the offer. In fact, as stated, one of the conditions of the sale of H6465 and H6466 to the parties is the amalgamation of the two parcels to H1345, which would have rendered the offer ineffective, as in order for the condition to be fulfilled all three parcels would have to be owned by the same person/s.

[342] The starting point when determining the entitlement of the parties to co-owned property is ownership in equal shares as laid down in *Charles v Charles* (supra). If the evidence adduced rebuts the presumption of equal shares, then the Court will proceed to make the appropriate order of settlement of the property on the basis of such evidence. In the present case the properties in question were purchased in 2005. The application to purchase dates back to 2003, the same year in which the parties were married after having been in a relationship for since 1981 and cohabiting since 1988. Both parties were involved in the application process as shown by Exhibit D4 and in particular Exhibit D5 – the letter of offer for parcel H1343 (later subdivided into H6465 and H6466) addressed to both parties. As in *Charles v Charles*, “[b]earing in mind that they registered the property in question during the height of their love affair, probabilities are overwhelming, in my view, that the parties intended co-ownership in equal shares. In this regard, it must always be borne in mind that what matters is the intention of the parties at the time when they registered the matrimonial property and not at the time of divorce.

[343] According to *Charles v Charles*, this Court now has to consider the circumstances of the present case to see whether the presumption has been rebutted. I do not find this to be the case. In particular I take into account that although Ms Lablache has admitted that she did not contribute directly to the payment for the purchase of the properties she contributed to the family generally. As stated in *Fredy Chetty v Carole Emile* which was relied upon in *Faure v Sinon*, the contributions of Ms Lablache to the welfare of the family including housework and care roles are equally as important as the monetary contributions. Ms Lablache worked and earned from the day she met Mr Pillay. She did not only contribute to taking care of the family and the home but also contributed monetarily to the expenses associated with the same. It is my view that Mr Pillay was only able to make the monetary contributions to loan repayments and other payments towards acquisition of properties and construction of buildings because Ms Pillay was also making the contributions that she was. I therefore find that she is entitled to a half share in Titles H6565 and H6466.

[344] Furthermore, as stated in *Charles v Charles*, the Court in determining an application under section 20(1)(g), is enjoined by that section to take into account the ability and financial means of the parties to the marriage “for the benefit of the other party” thereof, and goes on to state that the “[t]he principle underlying this section is ... one of equity designed ... to ensure that no party to a settlement of matrimonial property shall remain destitute while the other party drowns in a sea of affluence so to speak”, and refers in that respect to what the Court stated in *Renaud v Renaud*, namely that “[t]he purpose of the provisions of ... 20 (1) (g) of the Act is to ensure that upon the dissolution of the marriage, a party to the marriage is not put at an unfair disadvantage in relation to the other by reason of the breakdown of the marriage and, as far as such is possible, to enable the party applying to maintain a fair and reasonable standard of living commensurate with or near to the standard the parties have maintained before the dissolution.” It is evident to this Court that to decide otherwise would put Ms Lablache at an unfair disadvantage. She has been used to a certain standard of living during the marriage which she will not be able to maintain if she is not awarded a half share in the property.

[345] Mr Accouche valued H6465 and H6466 at SCR564,518 (Exhibit P19) and Mr Valentin valued the two parcels at SCR709,371 (Exhibit 29). However he had no issues with Mr Accouche's valuation and found that the difference of SCR144,853 between the two valuations fell within the acceptable margin. This Court will therefore use the average between the two valuations i.e. SCR636,944.50 to calculate the entitlement of the parties to the properties. The half share to which each party is entitled is SCR318,472.25

Title V1332 (English River)

[346] Title V1332 was purchased by Mr Pillay for SCR300,000 from Jenny and Octave Tirant by transfer deed dated 22nd February 2006 and registered on 20th March 2006. At the time there was a building on the land which required renovation, and which according to Mr Pillay was demolished and rebuilt, and according to Ms Lablache first renovated and then extended. It is to be noted that Exhibit P6(h) – a letter from the Planning Authority regarding his planning application for “*NEW ROOF AT ENGLISH RIVER PARCEL V1332*” – tends to show that the existing building was renovated rather than demolished and rebuilt. In the latter case the planning application would have been for the whole building and not just the new roof. I am therefore inclined to believe that the existing building was renovated and later extended, although given Mr Octave Tirant's testimony as to the state of the building, such renovations would have been quite extensive. The extensions to the building encroached onto three adjoining parcels belonging to the Government namely V15988 and V15989 which have been leased to Mr Pillay by the Government, and an unregistered parcel. Title V1332 was transferred to Kimberley and Iouanna Pillay by Mr Pillay who retained the usufructuary interest for himself, as shown by Certificate of Official Search dated 22nd May 2017 (Exhibit P6(d)). Currently Mr Pillay has a workshop and an office for his electrical contracting business in the building. He also rents out part of the building to two other tenants – an accounting firm and a supplier of auto accessories and spare parts, for which he is paid SCR70,000 rent per month.

[347] Mr Pillay mentions neither Title V1332 nor his usufructuary interest therein in his petition. Ms Lablache, in her counter-petition, in addition to a half share of all the properties owned jointly by the parties and solely by Mr Pillay including those disposed of by him to their children, seeks to be awarded Title V1332 and the building thereon in

the alternative to being awarded other properties (i.e. Titles H1345 with the house thereon, H6465 and H6466). However, at the hearing she stated that if she is awarded V1332 and the building thereon she would not seek to be awarded anything else by the Court as that property would be sufficient for her.

[348] Mr Pillay does not accept that Ms Lablache is entitled to a share in V1332 or the building thereon. He claims that he initiated and negotiated the purchase of the property, and borrowed and solely repaid a loan of SCR600,000 to finance such purchase and the rebuilding of the building thereon with no contributions from her. He further claims that he invested an additional SCR1.3 million in the construction of the building which he stated started in 2007 and took 3 to 4 years to complete as the money came from his salary although he has brought no evidence of such additional investment.

[349] To my mind it is irrelevant who initially approached Mr Tirant about the purchase of the property, although Mr Tirant's testimony shows that both parties eventually got involved in the negotiations. What is important is that he sold the property because of his family relationship to Ms Lablache for the purpose of assisting her in her business, which I find is relevant in determining whether Ms Lablache is entitled to a share of the property.

[350] As for the contributions of the parties, the exhibits show that all documents pertaining to the sale and registration of the property are signed by or in the name of Mr Pillay, namely the transfer deed (Exhibit P6) and receipt for stamp duty on transfer (P6(f)). The Planning documents (Exhibits P6(g) and P6(h) in respect of the building are also in his name. The loan agreement (Exhibit P6(e)) however shows that while he is the borrower, Ms Lablache is the co-borrower. Furthermore, while the loan was credited to his account (Exhibit P6(a) & Exhibit P6(e)) and was repaid by deductions from his account (Exhibits P6(b) and (c)), I note that the security provided for the loan as per the loan agreement includes 1st and 2nd line mortgages on H1345 which is co-owned by the parties and which would have required the permission of Ms Lablache. This indicates that the purchase and development of the property was a joint venture by the parties despite the property being registered solely in Mr Pillay's name, and supports Ms Lablache's claim that the property was sold to the parties because of her family relationship to Mr Octave Tirant and for the

purpose of being used for her business. This is further confirmed by Mr Octave Tirant's testimony who stated that initially he never intended to sell the property and only considered it when requested by Ms Lablache for the purpose of operating her business. The fact that the first tenant to rent the renovated building was Ms Lablache is further confirmation that this was the purpose of the sale of the property to the parties, although the transfer was solely to Mr Pillay. She explained that she moved out so that they could rent to another tenant from whom they could obtain more rent so that they could repay the loan faster which is a perfectly credible explanation. It is also noteworthy that when Mr Tirant realised that the land had been transferred in Mr Pillay's sole name and informed Ms Lablache of the same, she showed no concern and told him that it was not a problem as they were husband and wife. In my view all this shows that it was the intention of the parties that the property was to be jointly enjoyed by the parties as husband and wife regardless that it was registered solely in Mr Pillay's name, that he repaid the loan, and even if he had invested SCR1.3 from his earnings, which as stated has not been proven. I am confirmed in my view that the development on V1332 was a joint venture of the parties by the involvement of Ms Lablache as shown the correspondence between her and the Government (Exhibits P6(i) & P8) regarding the purchase and lease of the parcels on which the building on V1332 encroached i.e. V15988 & V15989 (subdivisions of V4746), although I note that the lease was entered into by the Government and Mr Pillay, which is understandable given that the property is registered in his name.

[351] Mr Pillay has claimed that the house on V1332 was demolished and completely rebuilt whereas Ms Lablache stated that the original building was renovated first and the renovations completed in 2009, when she moved in and started operating her business. She claims that it is only after that, that the building was extended. According to her the SCR600,000 loan was used to pay for the purchase of V1332 and the renovation, and that the rental from the renovated building was used to refund the loan and finance the extension of the building. According to Mr Pillay works on the building on V1332 started in 2007 which is plausible given that planning permission had to be sought as shown by Exhibit P6(h). It is also clear from Exhibit D18 – extract of ledger showing payment of rent by Ms Lablache - that renovation of the building had been completed by

December 2009. Given the sums paid as rent by Ms Lablache which ranged from SCR4000 to SCR7,000 (Exhibit D18) and the monthly loan repayments of SCR9,960.71 as shown by the loan agreement (Exhibit P6(e)), it is doubtful that from 2009 to 2011, when she rented the premises, the rent was sufficient to cover both the loan repayments and the extension works. It is therefore likely that Mr Pillay did pitch in and contribute to the same from his earnings initially, at least until they were able to obtain more rent from the other tenant when Ms Lablache moved out in 2011, and after completion and rental of the extension.

[352] Admittedly Mr Pillay did contribute to the acquisition of V1332 and the renovation and extension of the building thereon as described above, but in my view he has attempted to exaggerate such contribution, in an attempt to minimise Ms Lablache's contribution and hence her entitlement to a share therein. This is shown by various misrepresentations on his part and the concealment of certain facts as recounted above. For example, the evidence is more consistent with the building on V1332 being renovated and extended albeit extensively, rather than demolished and rebuilt as claimed by him. It can reasonably be inferred that if he had demolished the building and rebuilt a new one as opposed to renovating and extending the existing one, he would have contributed more. Mr Pillay has also tried to make out that the property was sold solely to him and without the participation of Ms Lablache whereas the evidence shows otherwise: he would have been unable to obtain the loan without Ms Lablache's assistance as co-borrower and to mortgage H1345, and he would certainly not have been able to even buy the land from Mr Tirant without Ms Lablache's family ties to the former, further bearing in mind that Mr Tirant sold the land for the purpose of assisting Ms Lablache in her business. Mr Pillay has also stated in cross-examination that he does not know when he started renting out the extended building obviously in an attempt to conceal firstly how much rent he has collected up to now, and secondly when he started collecting enough rent from the extensions to the original building to cover the loan repayments. The building after it was extended would obviously fetch more in terms of rent than before its extension. In her counter-petition Ms Lablache has stated that Mr Pillay receives a monthly rent of SCR70,000 which he has admitted, and out of which she has only benefited by SCR45,000 which he paid towards the cost of her vehicle ISUZU S24137. However in a

further attempt to mislead the Court he first stated in cross-examination that that he is still repaying the loan and could obtain evidence of the same from the bank but then recanted and admitted that he had completed the loan repayments and was using part of the rental to maintain the building and was pocketing the rest, which he justified by saying that it was his money. I note from the loan agreement (Exhibit P6(e)) produced by Mr Pillay himself that the loan was to be repaid in 84 monthly instalments of SCR9,960.71 from 28th February 2006 until full repayment. This means that the loan would have been fully repaid by the end of January 2013, and that since then Mr Pillay would have been pocketing the monthly rent of SCR70,000 minus the maintenance costs of the building and the payments for the lease of the Government properties encroached upon, which would have more than made up for what he claims to have spent on the acquisition of V1332 and the renovation and extension of the building out of his own funds. Ms Lablache on the other hand, despite her contributions and the fact that Mr Tirant sold the property to assist her in her business has only received SCR45,000 from the income generated by the building on V1332. Furthermore, although Mr Pillay has claimed that he solely repaid the loan and provided a further SCR1.3 million towards renovation and extension of the building, he also stated that Ms Lablache had to move out of the building in 2011 because she was unable to pay the rent, otherwise he would have been unable to repay the loan. In my view this is a clear admission that the loan was repaid with the rent obtained for the building.

[353] Ms Lablache admitted that except for the money that she contributed in terms of rent of the building on V1332 from 2009 to 2011 which was used to repay the loan she made no other contributions to the repayment of the loan. However she contributed by looking after the home and the children and making other monetary household and family contributions. This is denied by Mr Pillay who claims that at the time of construction of the building, he paid the utility bills and they both looked after the children but that she did not give him much support on the home front because she was working in her textile business which she operated at the studio in Majoie at the time. I believe that Ms Lablache did contribute to the household and family both monetarily and with her time and effort. Furthermore she would have been able to take care of her business as well as keep an eye on the children and home as the studio is next to the house. The value of such

contributions are not to be made light of as pointed out in *Faure v Sinon* (supra) and *Emile v Chetty* (supra).

[354] Mr Pillay testified that he earned from SCR28,000 to SCR35,000 and sometimes more from his contracting business. I do not believe that prior to completing the extension to the building and receiving a rent of SCR70,000, he would have been able by relying solely on his earnings, to take care of family and household expenses, repay the loan and bear the construction costs of the extension of the building on V1332 as well as other constructions on other properties. In that regard, I note that Mr Pillay has claimed that a lot of the developments undertaken on the various properties subject matter of this petition and counter petition were financed from his earnings (i.e. the top storey of the matrimonial home, the studio, the apartments and bedsitters on H1346, upper storey on the semi-detached house on H1345). I do not believe that he would have been able to pay for all these developments (in addition to all the other family and household expenses he claims to have made with no help from Ms Lablache) solely on his earnings, although it is possible that he did for some of them. It is clear to this court that he is attempting to exaggerate his contributions while minimising those of Ms Lablache.

[355] In view of her contributions as detailed above, I find that Ms Lablache is entitled to a half share in title V1332 and the building thereon (which extends onto V15988, V15989 and the unregistered parcel which belong to the Government).

[356] Mr Accouche has valued V1332 and the building at SCR4,866,247.77 whereas Mr Valentin has valued the same at SCR5,844,148.00. There is a difference of SCR977,900.23 between the two valuations. According to Mr Accouche, variations in expert valuation reports are normal as there is no specific science by which valuation of property is carried out and different valuation methods are used by different quantity surveyors. Mr Valentin on the other hand stated that whereas he had no issue with Mr Accouche's valuation of the land as the difference between his and Mr Accouche's valuation fell within the acceptable margin, he expressed doubts about Mr Accouche's valuation of the commercial building which he opined had been excessively depreciated. Nevertheless he stated that Mr Accouche had not stated in his report how he had reached

that amount of depreciation and more clarification as to the basis of such depreciation was required, for him to give an informed opinion thereon. However he opined that the depreciation by Mr Accouche could be due to the encroachment of the building on the three parcels of Government land, which according to him is not a relevant factor to be taken into consideration for the same. I take note that although Mr Accouche testified that he had an issue with the building on V1332 encroaching on three other properties which will make the property difficult to sell, he has not specifically stated in his report that this was a depreciating factor in regards to the building. In cross-examination, Mr Accouche confirmed that the building on V1332 is in good condition. Previously in examination in chief he had stated that the encroachment by the building on three other plots of land would make it difficult to sell. However he has not stated in so many words that this is the reason for which he has depreciated the building by that sum. In the absence of information as the basis for the depreciation applied by Mr Accouche in his valuation report or his testimony, the Court is not prepared to interfere with his valuation relying on the assumptions of Mr Valentin on the subject. More to the point, Mr Valentin pointed out that Mr Accouche had not taken into account other developmental works on V1332 such as the retaining wall and the boundary wall which Mr Valentin had valued at SCR269,128.00, and which this Court agrees should have been taken into account. For that reason the Court declines to consider Mr Accouche's valuation and relies on Mr Valentin's valuation of SCR5,844,148.00. The half share of the parties in V1332 and the building thereon will therefore amount to SCR2,922,074.

Titles V9192 & V9193 (purchased from Mr Pillay's father)

[357] Mr Pillay testified that his father Georges Herbert Pillay transferred Titles V9192 and V9193 to him but he does not recall when the transfer was effected. Exhibits P15 and P16 – Certificates of Official Search dated 26th June 2019, in respect of V9192 and V9193 respectively show that both properties are registered in the name of Mr Pillay as proprietor with his father having a usufructuary interest in both properties. Mr Pillay also stated that there is a house on each of the parcels and that his father occupies one and rents out the other one. In examination in chief he claimed that no consideration was paid for the transfer of the parcels but admitted under cross-examination that he had paid SCR150,000 for the properties. The two properties do not feature in Mr Pillay's petition.

The reason he gave for this is that although his father transferred them to him he still considers them as his father's property. He testified that Ms Lablache is not entitled to a share of the properties as she did not contribute to pay for them nor did his father indicate that she was to have a share therein.

[358] At paragraph 25 of her affidavit in support of her counter-petition Ms Lablache avers that “[i]n 2008, the Counter-Respondent bought the bare ownership in Titles V9192 and V9193, and his father has the usufructuary interests of these two properties”. She testified that she seeks a share in the properties because they form part of the matrimonial pool, but accepted in cross examination that she did not pay for or contribute towards the purchase of the two properties.

[359] Although Ms Lablache deponed that the properties were purchased during the marriage of the parties, she has not brought any documentary evidence of the same. In fact other than that Mr Pillay had acquired the properties before 26th June 2019 – the date of the Certificates of Official Search, there is no documentary evidence to show the actual date of the transfer, which is a relevant factor in determining whether Ms Lablache is entitled to a share of the properties. In the circumstances, this Court finds no basis to award her any shares in Titles V9192 and V9193.

Title H2307 (Majoie – bare-ownership purchased from Francis Ally)

[360] Title H2307 was purchased by Mr Pillay for a consideration of SCR350,000 from Francis Ally who was granted a usufructuary interest therein for his lifetime, by transfer deed dated 12th June 2012 (Exhibit P14). Mr Ally currently resides in a house on the property. The current owner of the property is Inesh Pillay as shown by Exhibit 14(a) Certificate of Official Search dated 22nd May 2017, although it is not possible to know exactly when Mr Pillay transferred the property to him given that the transfer deed was not exhibited. What is known is that the property was acquired by Mr Pillay in 2012 during the marriage of the parties and disposed of sometime between 2012 and May 2017.

[361] Mr Pillay makes no reference to Title H2307 in his petition or supporting affidavit, although he testified in respect of it. Ms Lablache's prayer in her counter-petition for “a

half share in all the properties [belonging jointly and solely to and including those disposed of by the Counter-Respondent to his children]” would include H2307.

[362] Mr Pillay denies that Ms Lablache is entitled to a share of H2307 on the basis that she did not contribute to its acquisition. He testified that he paid for the property over a period of 4 years out of his salary which he paid himself from his electrical contractor business, and that Ms Lablache did not contribute to the payments. Ms Pillay agrees that Mr Pillay repaid the purchase price for H2307 over a period of time but claims that he sometimes borrowed money from her to pay Mr Ally and did not always return it. She has not brought any evidence of the sums she supposedly lent Mr Pillay but this Court accepts her statement that it is normal between family members not to have documentary evidence of money given or lent to each other. Even if she had not contributed such sums, the property was acquired during their marriage and as stated previously in respect of the other properties, Ms Lablache made contributions in monetary terms to the family and household expenses which in turn permitted Mr Pillay to spend his earnings on other things such as investing in properties. As already pointed out, throughout the time that they were together until her business was affected by the Covid pandemic, Ms Lablache was also earning an income first from her employment with the Ministry of Education, and then from her various businesses. Ms Lablache also contributed in kind to the welfare of the family by way of housework and care roles. In the circumstances and on the strength of the authorities cited, I find that Ms Lablache is entitled to a half share of H2307 and the developments thereon.

[363] Mr Accouche valued the property at SCR410,233.97 (Exhibit P18) which is less than half of Mr Valentin’s valuation of SCR1,042,213 (Exhibit D28) for the same property. Mr Valentin’s explanations for the differences between the two valuations, on the basis of which he says his valuation should be preferred are as follows: Firstly he pointed out that Mr Accouche had used a much lower base rate for calculating the value of the land comprised in H2307 (i.e. 142.56 per m²) compared to the one he had used for H6638 (i.e. 808 per m²), whereas the two plots are located in the same area, and H2307 is buildable land and has road access, which is not the case for H6638. Mr Valentin on the other hand has used more or less the same rates for the two plots. Secondly whilst both quantity

surveyors devalued the land because of the presence of the building thereon, Mr Accouche used that same lower base rate to do so which Mr Valentin has stated is not justified. While this explanation for preferring Mr Valentin's valuation appears at first glance to be justified, it is to be noted that Mr Valentin's valuation does not state the base rate that he has used. He simply contents himself with stating that the rates that he has used for H2307 and H6638 are more or less the same and more realistic. Moreover, this Court, does not have the required knowledge and expertise to make a finding as to which rates are the correct or more justifiable ones, especially in the absence of the rates used by Mr Valentin.

[364] In regards to the buildings/ developments on H2307, whereas Mr Valentin took into account all infrastructures on the land, Mr Accouche only took into account the dwelling house excluding the paving, retaining wall and boundary wall which have been valued at SCR18,200, SCR78,125 and SCR14,825 respectively by Mr Valentin amounting to a total of SCR111,200. I agree that all infrastructures should have been taken into account.

[365] Finally Mr Valentin states that the fact that Mr Francis Ally has usufructuary interest in the property should not have been considered as a devaluing factor by Mr Accouche as it has no impact on the value of the property. It is to be noted that Mr Accouche has stated in his report that this makes the property "*undesirable on the open market if the current owner consider (sic) selling the ... property*", and on that basis devalued the property by SCR440,000. I tend to agree with Mr Accouche as to the reasons for devaluing the property although I cannot make any finding as to the correctness of the amount by which the property has been devalued for lack of expertise in the subject.

[366] The second factor is the house on H2307 which was built in the 1980s and although it has quite a bit of life span remaining, has structural damage on one side. The house has to be devalued to take into account works to restore its structural integrity as well as renovation works for floor tiles, doors ceilings, the roof, kitchen cabinets and even electrical installations. In spite of the structural damage and need for renovation he admitted that the house was habitable and confirmed that Mr Ally was occupying it.

[367] For the above reasons, this Court has difficulty preferring one valuation over the other. In the circumstances, the fairest solution is to use the average between the two valuations (SCR410,233.97 and SCR1,042,213) which amounts to SCR726,223.49. Each party is entitled to a half share of the property which therefore amounts to SCR363,111.74.

Title H6638

[368] Title H6638 does not feature in Mr Pillay's petition. He does not refer to it in his testimony either. However the property would fall under "*properties belonging jointly and solely to and including those disposed of by [Mr Pillay] to his children*" of which Ms Lablache seeks a half-share, as the property which was initially registered in Mr Pillay's sole name was transferred to Kimberley and Inesh Pillay. At paragraph 24 of her affidavit in support of the counter-petition she avers that:

24. In 2012 and 2015, the Counter-Respondent bought Titles H2307 and H6638 and registered those two Titles on his name solely ... In 2016 the Counter-Respondent transferred Title H2307 on our minor son and Title H6638 on our son and daughter but he kept the usufructuary interests in both titles. This was done without my knowledge.

[369] There is no documentary evidence to support the averment that Mr Pillay purchased H6638 in 2015, although Exhibit P1 - transfer deed dated 23rd July 2016 - bears out that Title H6638 (together with Title H1346) was transferred by Mr Walter Patrick Pillay to Kimberley Pillay and Inesh Pillay reserving the usufructuary interest to himself for his lifetime.

[370] It is not possible to ascertain from the exhibits produced or the testimony of the witnesses when, from whom and how H6638 was acquired by Mr Pillay, or how he paid for it, all of which are relevant for this Court to determine whether Ms Lablache is entitled to a share thereof. Ms Lablache's oral testimony does not throw much light on the matter either. She stated that she is not aware of H6638 although it features in her affidavit, and mistook it for parcel H10786 purchased by Mr Pillay from Mr Laramé. Given the lack of evidence as stated above, this Court finds itself unable to make a finding that Ms Lablache is entitled to a share of H6638.

Decision

[371] In terms of his petition, Mr Pillay seeks sole ownership and occupancy of parcels H1343 (subdivided into H6465 and H6466) and H1345. Ms Lablache, in her counter-petition seeks a half share of all the properties owned solely or jointly by Mr Pillay including those he has transferred to their children. These are parcels H6638, V9192, V9193, H1346, H10786, H1345, H6465, H6466, V1332 and H2307. In addition she seeks sole ownership of H1345, H6465 and H6466, and in the alternative of V1332.

[372] This Court has found that:

- (a) Ms Lablache is not entitled to any share in land parcel **H6638** which Mr Pillay transferred to Kimberley and Inesh Pillay reserving the usufructuary interest for himself; or land parcels **V9192 and V9193** and the structures thereon in which Mr Pillay holds the bare-ownership and Mr Herbert Pillay holds the usufructuary interest.
- (b) Ms Lablache is not entitled to a share in the land comprised in **H1346** which Mr Pillay has transferred to Kimberley and Inesh Pillay reserving the usufructuary interest for himself, but the parties are each entitled to a half share of the matrimonial home thereon, which half share is valued at **SCR1,557,555.46**.
- (c) Ms Lablache is not entitled to a share in the land comprised in **H10786** which belongs solely to Mr Pillay, but that the parties are each entitled to a half share of the structures thereon which half share is valued at **SCR1,139,681**.
- (d) The parties are each entitled to a half share in:
 - Title **H1345** and the semi-detached house thereon which is co-owned by the parties, which half share is valued at **SCR1,756,511.92**;
 - Titles **H6465 & H6466** which is co-owned by the parties, which half share is valued at **SCR318,472.25**;
 - Title **V1332** and the commercial building thereon which encroaches on 3 Government-owned properties two of which are leased to Mr Pillay (V15988 &

V15989) which half share is valued at **SCR2,922,074**. Mr Pillay has transferred the property to Kimberley and Iouanna Pillay reserving the usufructuary interest to himself;

- Title **H2307** and the house thereon in which Mr Pillay held the bare-ownership and Mr Francis Ally the usufructuary interest, until Mr Pillay transferred his bare-ownership to Inesh Pillay, which half share is valued at **SCR363,111.74**.

[373] As stated, both Mr Pillay and Ms Lablache are seeking sole ownership of Title H1345 as well as Titles H6465 and H6466 (subdivisions of H1343). It is to be noted that H6465 and H6466 were sold to the parties on the express condition that they are amalgamated to H1345 and that furthermore there is no access to these two parcels except over H1345. In the circumstances only one of the parties must have ownership of all three parcels.

[374] Mr Pillay objects to Ms Lablache being awarded H1345 and the semi-detached house thereon (which she currently occupies) and the two neighbouring Titles H6465 and H6466, on the basis that H1345 is next to where he lives (on H1346) and she keeps making complaints about him to the authorities including the police, the Public Health Authority and the Environment Department. He states that he is tired of the police coming to his place regarding complaints about things that he did not do. Ms Lablache claims that she made the complaints because of his own behaviour and actions.

[375] Ms Lablache has no issue with being awarded H1345 and the semi-detached house thereon and the two neighbouring Titles H6465 and H6466, despite the proximity of H1345 to H1346 on which the matrimonial home stands. She testified that there is sufficient space between H1345 and H1346 which furthermore are separated by a road, for the parties to maintain their distance, and that moreover if problems do arise either party can obtain a court order to restrain the other party from bothering him or her. However she seems to have failed to take into account that both properties are served by the same access road over H1345 which also provides access to H6465 and H6466, so that despite the parties' best efforts there is no way that they can completely avoid contact.

[376] Furthermore she has herself stated that Mr Pillay has come to the house she is occupying to harass her, swear at her, pick fights with her and has also scratched her truck, although admittedly this has lessened since he is no longer on speaking terms with his mother who lives in the other unit of the semi-detached house occupied by Ms Lablache. She also claims that causes disturbances in the neighbourhood when he is drunk. This Court has also had the opportunity to observe the demeanour of the parties in Court in the presence of each other and when testifying about each other. It is abundantly clear that there is no love lost between them and in my view it would be inviting trouble for them to reside so close to each other. Although in some instances, a court order may successfully serve the purpose of maintaining peace between neighbours, this is not always the case and there is no guarantee that this will be the case in regards to the parties, especially given the degree of animosity between them. In my view it is better to avoid a situation which is more likely than not to give rise to conflict rather than attempt to remedy the same when such conflict occurs, with no guarantee that the remedy will work.

[377] There are other reasons against transferring H1345, H6465 and H6466 to Ms Lablache. Mr Pillay has stated that if Ms Lablache is awarded H1345, his mother who is currently residing in one unit of the semi-detached house on that property will no longer have a roof over her head. I find it inhuman to evict an elderly person who has nowhere else to go. Furthermore, if Ms Lablache is awarded H1345, H6465 and H6466, even if she is awarded half of the value of the other properties as specified in paragraph [371] above, she will not only have to undertake repairs to the ground floor of the semi-detached house but also have to complete construction of the top storey thereof. It must also be borne in mind that the motorable access to H1345 does not reach the house thereon which can only be accessed through steps and which will require additional expenses if the access is to reach the house. In addition, at the moment H6465 and H6466 are only accessible through a footpath and Mr Accouche has stated in his valuation report that given the topography of the land it will be costly to build a motorable access to these properties. To award Ms Lablache these properties may be more of a curse than a blessing to her as a substantial part of what she is awarded as her share in the other properties would have to be spent on the aforementioned matters, bearing in mind that at present Ms Lablache's funds are limited, and that she requires funds for her business as well.

[378] In the alternative to being awarded H1345, H6465 and H6466 Ms Lablache seeks sole ownership of Title V1332. I find it more appropriate to award her V1332 than H1345, H6465 and H6466 for the reasons stated above, and although V1332 is registered in the sole name of Mr Pillay, given that it was only sold to him by Mr Octave and Mrs Jenny Tirant because of the family relationship between Mr Tirant and Ms Lablache, and for the purpose of Ms Lablache carrying out her business and further given the Court's finding that the purchase and development of the property was a joint venture between the parties. Taking all this into account, I find it only fair and in the interests of justice that the property is awarded to her. I further take into account that although Mr Pillay started repaying the loan for the property out of his own earnings, he has pocketed a substantial amount of rent since completing the loan repayments which more than makes up for what he has paid, even taking into account maintenance costs of the building and the payment of the lease of the properties encroached upon, and out of which rent Ms Lablache has received only SCR45,000.

[379] Mr Pillay has not, in my view, put forth any valid reason for not awarding this property to Ms Lablache. However I take into account that his workshop for his electrical contractor business and office are located in the building on V1332, but I have no doubt that he is resourceful enough to find other premises for the same, bearing in mind the many properties that remain in his possession. I am also mindful that to relocate his business to other premises will involve a degree of inconvenience but that is sometimes inevitable in circumstances such as these. I further take into account that since the time that Ms Lablache has been unable to use her studio, she has been facing immense difficulties in carrying out her business activities because of limited space and facilities which has caused her prejudice. The premises will provide her with the space to do so.

[380] I take note that Ms Lablache testified that if she is awarded V1332 and the building thereon, she does not seek to be awarded anything else, as it will be sufficient for her. This means that she does not wish to pursue her claim for a half share in the other properties and that she will also have to give up her half share in H1345, H6465 and H6466 and vacate the house on H1345 which she is currently occupying. In that regard I take note that the building on V1332 fetches a substantial amount of rent which will

provide her with the means to obtain alternative accommodation. Furthermore given that if Ms Lablache had not waived her claim in respect of the properties to which I have found she is entitled to a share (other than V1332), she would have been entitled to be paid a sum of SCR5,135,332.37 for her share in these properties by Mr Pillay. In the circumstances, I find it only fair that any costs associated with the transfer of V1332 to Ms Lablache and the transfer of her half share in H1345, H6465 and H6466 to Mr Pillay should be borne by Mr Pillay.

[381] I also note that the building on V1332 is a commercial one which is being rented out and that with the change of ownership of the building, Ms Lablache will be the new lessor or landlord. I am mindful that provision must be made to cause the least amount of inconvenience to the tenants or lessees of the building on V1332, and to provide them with sufficient notice of the change of ownership of the property.

[382] I further note that the award of V1332 to Ms Lablache will not be possible if the property remains in the ownership of Kimberley and Iouanna Pillay. In order to give effect to the award, it is necessary that ownership of that parcel reverts to Mr Pillay by operation of section 22 of the MCA. This Court found at paragraph [287] that Mr Pillay transferred H1346, H6638, V1332 and H2307 to the children of the parties with the clear intent of denying Ms Lablache of her rightful share in such properties. It further stated that “[u]nder section 22(1)(b) once the Court is satisfied that the disposition of properties by a party was made with the intention of defeating the claim of the other party, it must also satisfy itself that if the disposition were set aside “financial relief or different financial relief would be granted to the applicant” before it makes an order setting aside the disposition. This Court is satisfied that the transfer of V1332 by Mr Pillay to Kimberley and Iouanna Pillay must be set aside, so that full ownership of the property reverts to Mr Pillay who can then transfer it to Ms Lablache to give effect to the relief that it intends to grant to Ms Lablache, namely full ownership of V1332 and the building thereon including the encroachments.

[383] Although this Court has stated as much previously in this judgment, the following bears repeating. The decision of this Court to award Ms Lablache V1332 and the building

thereon was made by applying the principles derived from our case law to ensure equity. In *Charles v Charles* (supra) the Court of Appeal stated that the discretion of a court to make an appropriate order of settlement under section 20(1)(g) of the MCA must only be exercised after due consideration of all the relevant factors, including “*the ability and financial means of the parties to the marriage "for the benefit of the other party" thereof*” as “*the court is enjoined by s. 20 (1) (g) of the Act to take into account.*” The Court of Appeal went on to state the following, which this Court finds of particular relevance in this case –

“The principle underlying this section is, in my Judgment one of equity designed, as it does, to ensure that no party to a settlement of matrimonial property shall remain destitute while the other party drowns in a sea of affluence so to speak”. Emphasis added.

[384] In that regard, the Court in *Charles v Charles* then proceeded to refer to the following which it had stated in *Renaud v Renaud SCA No. 48 of 1998*:

“The purpose of the provisions of these subsections (i.e. 20 (1) (g) of the Act) is to ensure that upon the dissolution of the marriage, a party to the marriage is not put at an unfair disadvantage in relation to the other by reason of the breakdown of the marriage and, as far as such is possible, to enable the party applying to maintain a fair and reasonable standard of living commensurate with or near to the standard the parties have maintained before the dissolution.” Emphasis added.

[385] It is the view of this Court that its decision is the fairest and most equitable one in the particular circumstances of this case. While Ms Lablache has been awarded a commercial property valued at SCR5,844,148.00 which generates income through its rental, Mr Pillay has ownership of, or the usufructuary interest in the remaining properties which Ms Pillay has renounced her half share of, and some of which are potentially income generating properties: He has full ownership of H10786, H1345, H 6465 and H6466; the usufructuary interest in V6638 and H1346; and the bare ownership in V9192 and V9193. He no longer holds any rights in H2307 in which he held the bare-ownership and Mr Francis Ally the usufructuary interest and which he transferred to his son Inesh. It is my view that this Court’s decision will ensure that neither party is “*put at an unfair disadvantage in relation to the other*” and will also “*enable both parties to maintain a*

fair and reasonable standard of living commensurate with or near to the standard the parties have maintained before the dissolution”.

[386] Accordingly I make the following orders:

- (a) In accordance with section 22(1)(b) of the MCA, the transfer of parcel V1332 to Kimberley and Iouanna Pillay is set aside so that full ownership of the property reverts to Mr Walter Patrick Pillay. The Land Registrar is directed to make the necessary entries in the relevant registers to give effect to this Order not later than one month of the date of this judgment.
- (b) Thereafter but not later than three (3) months after the date of this judgment, Mr Walter Patrick Pillay shall transfer Title V1332 and the building thereon including the encroachments on the adjoining Government land to Ms Paquerette Lablache, and vacate the property. The costs of transferring the property including notarial fees as well as stamp duty and registration dues shall be borne by Mr Pillay for the reason given above. For the avoidance of doubt, Mr Pillay shall not be under any obligation to pay rent for the premises during the aforementioned period of three (3) months. For further avoidance of doubt Mr Pillay shall have no rights over Title V1332 and the building thereon including the encroachments on the adjoining Government land after the expiry of the aforementioned period of three (3) months.
- (c) The Government through the Ministry of Lands & Housing is directed to transfer the subsisting lease of parcels V15988 & V15989 from Mr Walter Patrick Pillay to Ms Paquerette Lablache not later than three (3) months after the date of this judgment, and in the event that such lease has expired to enter into a new lease in respect of those parcels with Ms Lablache within such period of three (3) months.
- (d) Any lease/tenancy agreements for the lease/ rent of the building on V1332 including the encroachments on the neighbouring parcels or part thereof, subsisting at the date of this judgment shall, terminate at the expiry of three (3) months after the date of this judgment, and new agreements entered into between Ms Lablache and the previous lessees/tenants shall become effective upon such termination. The new agreements

shall be on the same terms and conditions as those provided in the previous agreements or such other terms and conditions as the parties may agree to, and unless otherwise agreed by the parties the term of the lease/tenancy under the new agreements shall not be such that the new leases/tenancies will end at an earlier date than the previous leases/tenancies would have ended. The foregoing shall be subject to any termination clauses in the lease/tenancy agreements. All rent payable under the new agreements for the period starting at the expiry of 3 months from the date of this judgment shall be paid to Ms Lablache.

(e) Ms Paquerette Lablache shall transfer her half share of H1345, H6465 and H6466 to Mr Walter Patrick Pillay, and vacate the house on H1345, not later than six (6) months after the date of this judgment. The costs of transferring the property including notarial fees as well as stamp duty and registration dues shall be borne by Mr Pillay for the reason given above.

[387] Given the nature of this case, the parties shall each bear their own costs.

[388] This judgment is to be served on the Land Registrar, the Government represented by the Ministry of Lands & Housing for compliance with the above orders and to the current lessees/tenants of the building on V1332 to give them notice of the same.

Signed, dated and delivered at Ile du Port on 2nd February 2024

Carolus J