

SUPREME COURT OF SEYCHELLES

Reportable

[2023]

MA259/2020

Arising in DV 118/19

In the matter between:

JOHNNY WILVEN JEAN

(rep. by Serge Rouillon)

Petitioner

and

FADETTE JOSIANNE JEAN (BORN DORA)

(rep. by Joel Camille)

Respondent

Neutral Citation: *Jean v Jean* (MA 259/2020 arising in DV 118/2019) [2023]
..... (14th December 2023).

Before: Pillay J

Summary: Division of Matrimonial Property

Heard: 3rd March 2023

Delivered: 14th December 2023

ORDER

[1] The Petition is dismissed.

[2] Each side shall bear their own costs.

JUDGMENT

PILLAY J:

[1] The Petitioner seeks an order for the final division of the parties' matrimonial property Title [REDACTED] and the house thereon, in particular to declare the parties' respective shares in the matrimonial property.

- [2] The undisputed facts are that the parties were married at La Passe, La Digue on 26th August 2001. That there were divorced by order of the court but did not pursue the division of their matrimonial property. During the divorce process a letter was written to Mr. Joel Camille attorney-at-law of the Respondent to offer the Respondent to purchase the undivided half share of the Petitioner in the matrimonial property but no reply was forthcoming. Since the divorce the Petitioner has vacated the matrimonial property and has moved on with his life and re-married.
- [3] I do not propose to rehearse the evidence at this juncture in view of the point of law raised by Learned counsel for the Respondent, since a finding in his favour will effectively end the matter.
- [4] Learned counsel for the Respondent limited his submission to the law and procedure. He submitted that the Petition cannot be maintained in law and must be dismissed in its entirety on the basis of Rule 4 and Rule 34 (1) of the Matrimonial Causes Rules. He submits that the Petition was filed in December 2020 almost 6 months after the order absolute was granted. He submits that the Petitioner never filed an application seeking leave to file the petition out of time as prescribed under Rule 34 (1). Learned counsel relied on the case of *Marie-Therese Hossen v Benjamin Choppy SCA 14/2022*.
- [5] Learned counsel for the Petitioner submitted on both the evidence and the law regarding division of matrimonial property. However, he did not address the issue of delay in filing the application for ancillary relief or the failure to seek leave to file the Petition out of time.
- [6] Rule 34 (1) of the Matrimonial Causes Rules provides that,

An application for a periodical payment or lump sum payment in accordance with rule 4(1) (b) or (c) or in relation to property in accordance with rule 4(1) (f), (h), (i) or (j) where a prayer for the same has not been included in the petition for divorce or nullity of marriage, may be made by the petitioner at any time after the expiration of the time for appearance to the petition, but no application shall be made later than 2 months after the order absolute except by leave.

- [7] Rule 4 of the Matrimonial Causes Rules provides that:

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;*

...

2. *Unless these rules otherwise provide, every other application in a matrimonial cause or matter shall be made, and any leave or directions shall be obtained, by summons to a judge in accordance with Form 3.*

[8] It is noted that during the proceedings of 17th March 2021 the Court raised the issue of the Petitioner needing to request for leave to proceed. Learned counsel for the Petitioner indicated that he did not think there was too much delay but that he would check. Nothing more came of it.

[9] In the case of *Sabadin v Sabadin (MA 247/2011) [2014] SCSC 35 (31 January 2014)* there was a lapse of almost more than 10 months from the time the order was made absolute to the filing of the petition for settlement of matrimonial property. No leave was sought to file this petition out of time. Though his Lordship “reluctantly exercise[d] some indulgence in th[e] matter in order to help to bring the parties’ dispute to a close on its merits” he did so as “no objection was taken by the adverse party at or prior to the hearing of this petition”. CJ N’tende noted that “The petitioner has not sought leave of this court to pursue this matter so clearly filed out of time. This would ordinarily be fatal to the petition. Parties and their legal advisors must understand that this court will enforce the time standards established by the rules.”

[10] The Learned Chief Justice considered the cases of *Algae v Attorney General SCA No. 35 of 2010 [unreported]* and cited with approval the words below of the Privy Council in *Ratnam v Curmarasamy [1964] All ER 933*,

‘The Rules of Court must prima facie, be obeyed, and in order to justify a court in extending the time during which some step

in procedure requires to be taken, there must be some material on which the court can exercise its discretion. If the law requires otherwise a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time table for the conduct of litigation.'

The Learned Chief Justice also considered the English case, **Revici v. Prentice Hall Incorporated**, [1969] 1 All E.R. 772 where Lord Denning M.R. made the same point when he said at p.774:

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

and Edmund Davies, L.J., similarly opined at p.774:

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

- [11] It is noted that the case of **Hossen**, relied on by Learned counsel for the Respondent, used as support for a finding that “filing of the petition out of time without seeking leave of the Court is fatal to the petition” the above mentioned case of **Sabadin**.
- [12] I am inclined to agree that non-compliance with time limits are fatal to the case. However as stated by the Learned Chief Justice in **Sabadin** some indulgence should be exercised not only to bring an end to the dispute between the parties but also because of the nature of the matter being the settlement of a matrimonial property following a divorce. However, in the case of **Sabadin** above, the Learned Chief Justice seems to have reluctantly agreed to overlook the non-compliance since the other party in the matter did not take up any objections. In contrast, the Respondent in the current matter has taken up objection. With that in mind along with the fact that the matter was brought to the attention of the Petitioner’s counsel who did not seek to rectify the situation I have to decline any indulgence to the Petitioner. I accordingly find that the non-compliance with Rule 34 (1) of the Matrimonial Causes Rules is fatal to the Petition.

[13] In the circumstances the Petition is dismissed.

[14] Each side shall bear their own costs.

Signed, dated and delivered at Ile du Port on 14th December 2023



Pillay J