

SUPREME COURT OF SEYCHELLES

Reportable

(MA 67/2022) arising in DV 47/2018))

In the matter between:

ROLLY ALAIN VOLCY
(*rep. by Ms. Pool*)

Petitioner

and

JACQUELINE THERESINE

FORMERLY VOLCY
(*rep. by Mr. Elizabeth*)

Respondent

Neutral Citation: *Volcy v Theresine* (MA 67/2022) arising in DV 47/2018)) 6 March 2026

Before: M. Burhan J

Summary: Division of matrimonial property

Heard: 19.09.2024, 19.11.2024

Delivered: 6th March 2026

ORDER

The Respondent is to pay a sum of SCR 730,000.00 (seven hundred and thirty thousand) to the Petitioner being his half share of the matrimonial property. Legal interest to accrue from the date of this judgment.

Both parties to bear their own costs.

JUDGMENT

M. BURHAN J

[1] The Petitioner filed this application seeking a division of the Matrimonial property and moved for the following reliefs:

1. *“The Respondent pays the Applicant/ Petitioner his share of the property*
2. *That the Court orders a valuation of the house built by the Applicant on land belonging to the heirs Theresine;*
3. *The Respondents pays the cost of this case;*
4. *The Court makes any orders that it deems fit and reasonable in the circumstances”.*

[2] In the attached affidavit the Petitioner sets out the background facts pertaining to the application and further moves that:

- a. *“A declaration that I have a half share in the house that I built on the heirs Theresine’s land;*
- b. *That I am paid half share of the value of the house thereon;*
- c. *any other order that the Court thinks just and reasonable in the circumstances.”*

[3] The Respondent in reply raised a plea in limine litis that the application is out of time and prescribed in law and ought to be dismissed with costs. Thereafter, this Court after hearing the parties by Ruling dated 20th October 2022 granted time for the Petitioner to file an application seeking leave to file the petition out of time.

[4] Accordingly, the Petitioner did file a notice of motion seeking leave from Court to file the application out of time for reasons stated in the annexed affidavit.

[5] The proceedings of 18th January 2023 indicate that learned Counsel who stood in for Mr Elizabeth on behalf of the Respondent stated that they will not be objecting to the granting of leave to file the application out of time. Court thereafter proceeded to grant the Respondent time to file defence. The Respondent filed an affidavit in rebuttal.

[6] It is clear when one peruses the pleadings and evidence led, both parties admit that they were married on 7 December 1995 and that divorce absolute was entered on the 27 December 2018. They admit one male child from the marriage who is now an adult. It is

also apparent that both parties according to the pleadings and submissions have brought this application under section 20 (1) (g) of the Matrimonial Causes Act. Section 20(1) (g) read with section 25 (1) of Matrimonial Causes Act 1992 grants powers to Court to make such orders as the Court thinks fit, in respect of any property of a party to a marriage for the benefit of the other party.

- [7] It is further admitted by both parties that the matrimonial property is a house built on parcel C1474 situated at Au Cap which parcel of land belongs to the Respondent's family members in equal shares who have given the Respondent permission to build a three bedroom house as stated in document P3 titled 'Droit de Superficie'.

The Petitioner's case.

- [8] It is the Petitioner's contention that he is self employed as a mason and doing other multiple jobs like breaking rocks and stone at Four Seasons. He started his own business as a Licenced Contractor and registered a business 'Mason and Carpentry Services' under his name Alain Rolly Volcy in February 2013. A Certificate of Registration obtained from the Company Registry was marked as exhibit P4. He produced his business licence valid from 30 October 2014 to 29 October 2019 as P5. During this time, he stated he partly constructed the house after excavating the land but stopped before completion due to divorce problems. He stated it was he who purchased all the materials for the construction the house. The Respondent did not contribute any material nor did she buy any material. He had receipts but he has never been able to get access to the receipts because he was illegally removed from the premises as one day, when he came home he was locked out. He produced the receipts with him for the period 2016 to 2017 as P6 (1 to 10) in respect of the construction works done by him during this period on the matrimonial property. He stated he was receiving payments for the construction work he was doing for others and would use the money on the construction of the matrimonial home. He had opened a bank account which was run by the Respondent in her name and it was she who did all the banking for him. .
- [9] Witness testified that when he presented the plan given to him by Andrew Chetty for approval by the bank for a loan, the bank had told him that the house would cost him

about SCR 900,000 and he would have to deposit SCR 100,000 separately for the loan. He never took the loan, as he believed he could use the deposit of SCR 100,000.00 the bank wanted for the loan, to build the house. He admitted he has never been able to get a proper valuation of the house as he stopped in the middle of construction. At the time he left they were already residing in the house. He described the house stating that there were two bedrooms upstairs and one downstairs which they used as a TV room. He stated that at the time he left the house he had put the tiles and at that time, he valued the house at SCR 800,000.00. He also did household chores like cooking, house repairs and washing clothes. He stated he was claiming half the money spent by him building the house.

[10] The Petitioner admitted that at the moment he is living separately and admitted he was imprisoned because he had hurt the Respondent with an axe. All he requests is that his half share be paid in respect of the expenses incurred by him in constructing the matrimonial home, in order that he could start over again. He admitted under cross examination that what he built was never completed by him and it was not painted nor was the ceiling complete. He denied the Respondent's suggestion that the house was built between 2004 and 2010 and thereafter there was no construction. He denied the suggestion that the 2016 receipts had nothing to do with the house. He maintained that when he had gone to the Seychelles Savings Bank to evaluate the plan and estimate the cost of the house to obtain a loan, he had been informed the estimated cost to build the house in the plan would be SCR 900,000.00.

[11] The Petitioner admits that his wife the Respondent was doing a job and in receipt of a steady monthly income. He admits that there were times he did not work and did not have construction contracts. The Petitioner admits the Respondent contributed towards the house and paid the utility and food bills. He admits he has no bank documents to prove he spent any of his money on the house or to prove he had taken a loan to build the house. He denied the incident of beating the Respondent with a cricket bat. It was suggested to him that due to his anger and as he had brought a sexually transmitted disease to the home, his wife had to seek protection from the Probation Office and the Family Tribunal. It was also suggested to him that his wife had spent on improvements and invested

money in the maintenance of the matrimonial property even after he left and continued to do so up to date.

- [12] The Petitioner further admitted that while he was constructing the Respondent performed the household matters like bringing up the child and cooking. He did not deny that she had taken care of him when he was unwell for a period of time when he was unable to work. He admits when he left the house in 2017 when he was locked out, the house was not complete. He admitted he had taken a long time to build the house. Whenever he received money from his business which amounts varied, he would spend it on the house construction, family and home.

The Respondent's Case.

- [13] The Respondent in her evidence under oath admits that the Petitioner constructed the matrimonial house but she also helped in that she contributed towards the construction of the house. She worked and from her earnings provided money for the blocks to construct the matrimonial home and also provided towards the food and other home activities. She was looking after the Petitioner by doing the washing and providing for food. There was a time when the Petitioner was very sick and he could not work and she was the sole breadwinner at that time. It is clear from her evidence that she worked from the age of 17 years and she explained her history of employment which was never contested.
- [14] The Respondent admitted from the years 2004 to the year 2010 there was work being done in the house. In 2011 their little corrugated iron house they were living in while constructing the matrimonial home was knocked down by a tree. They had to go into the matrimonial house which was partly built. There was no electricity, no water and it was only half finished. They had moved in there quickly and roofed the attic, so that they could have a place to stay. No doors were fixed at that time and the kids did not have a room to sleep as their rooms were not complete. Witness stated she and the Petitioner were sleeping upstairs in the attic, the house was open. At the beginning whenever they had savings they would buy bricks to construct the house and friends would help them. She admitted the Petitioner understood construction better than her but she too contributed from her savings towards the construction of the house. She did her job and

helped in the construction during her spare time. She admitted the Petitioner had a construction licence P5. The Respondent denied the receipts in P6 and P7 and stated the house was not being constructed during this time.

- [15] The Respondent contends that the Petitioner left the matrimonial home in 2015. When the Petitioner left the matrimonial home in 2015, she stated that the roof was partly done to the middle of the attic, the plastering was partly done and there was plywood where the windows were supposed to be. It was very dark and empty. The house was not painted and it was only partly plastered. They had used the downstairs as a TV room and there was also a shower. The TV room and the kitchen had a door. There are two bedrooms in the attic and on the ground floor there is one room.
- [16] After the Petitioner left in 2015, she stated it was she who put tiles in the entrance and the sitting room, and burglar bars on the front door. She used new and old louvers, she removed the plywood upstairs and put it downstairs. She admitted the sliding window was done before the Petitioner left. The Respondent confirmed document R1 which was prepared as a quotation for a three bedroom house which was SCR 346,000.00 in the year 2001. She was in permanent employment and her daughter who is not his child was getting a social security benefit and with this they were able to get the materials for the house from their savings. She had taken a loan from her employer, a loan to buy corrugated iron for the house but he had gifted her SCR 5000. She stated she even paid her husband's child maintenance alimony for SCR 300 as he had a child outside their marriage. Whenever she had money she would invest it in the house.
- [17] The Respondent thereafter produced several documents dated between the years 2016 to 2023 as R3 to R 29. These documents indicate her effort and expenditure incurred during this period on the house after the Respondent had left. The documents indicate purchase of materials for the house, PUC water application document, purchase of galvanized tubing, corrugated iron bought at Rapid Roofing, door locks, a rice cooker ceramic floor tiles, electrical items, obscure louver glass and a rewiring loan of SCR 50,000 loan from Housing Finance Company for which a sum of SCR 1614 was deducted from her salary to pay the loan. She admitted the Petitioner was earning more than her but that does not

mean he was putting all his money on the house. She admitted that the Petitioner would bank what he earned in her account once or twice which was about SCR 20,000.00. From the year 2017 he did not come back to the house but sent threats.

[18] The Respondent referred to the incident of assault that happened to her in November 2016. . He had seen her and asked her to get out of the car, she had refused when she went home he had accused her of seeing another man and beaten her with a bat. Her son had called the police and he had spent one night in jail because of the incident and the Family Tribunal had placed him on two years' probation. The Respondent next referred to the incident of assault on her by the Respondent with an axe for which he had been sent to imprisonment for a period of four years. It is clear that she was living in fear and acting on police advice had secured her house with her own funds.

[19] She maintained in cross examination the value of house was not SCR 900,000.00 as mentioned by the Petitioner. The receipts produce by her are all dated after the Petitioner left the house. She admitted that all items were not for construction purposes but were payments for furniture necessary in a house. She also referred to the rewiring and fixing of a new electricity meter for the house. She stated that the Court has ordered her be paid a sum of SCR 100,000.00 for the injuries caused to her in the attack with the axe. She further stated that as the Petitioner had gone to live with somebody else, she had applied for a divorce. She still lives with pain after the attack on her.

Analysis of the Evidence, Case Law and Findings.

[20] The main grounds urged by learned Counsel for the Petitioner is that as his earnings were higher than that of the Respondent, he had contributed a larger share towards the building of the house. He requests his share be estimated on the basis of the valuation given by an Officer of the Seychelles Savings Bank who looked at the plan of the three bedroom house when he applied for a loan and estimated value of the house he intended to build as SCR 900,000.00. The Petitioner states that when he left the house in 2016, it was in a habitable state and only minor works remained to be done. However, the Petitioner has failed to call the said Officer from the Seychelles Savings bank to support his evidence. The Respondent on the other hand in her evidence seeks to rely on R1 which was

prepared as a quotation for a three bedroom house which was SCR 346,000.00 in the year 2001. I find this valuation too unacceptable considering the valuation was as far back as 2001.

[21] This Court however with the consent of both parties, nominated a quantity Surveyor one Mr Nigel Roucou to value the said house in its current state. The valuation report dated 25 June 2025 is before this Court and the valuation of the existing structure excluding the land is SCR 1,460,000.00. Neither party has sought to contest the correctness of this valuation. The Respondent appears to mistakenly believe that this valuation includes the land as well. This is incorrect as the Quantity Surveyor specifically excludes the land value in his report. I therefore am satisfied that the value of the matrimonial home excluding the land on it is SCR 1,460,000.00.

[22] It is the Petitioners position that it was he who contributed a greater amount to the construction of the property. It is his contention that the Respondent contributed only a nominal amount. However he admits unlike him, she was working throughout and contributed towards the running of the house, utility bills and food and she did her duties as a dutiful spouse and does not deny she took care of him during the time he was unwell and unable to pay the maintenance money he had to pay. I am of the view considering the evidence before this Court that the Petitioner did contribute both by way of money and personal effort in the construction of the said house. This is not denied by the Respondent. Her position is that she too contributed towards the construction of the house maybe be monetarily lesser but at the same time taking care of other payments in the matrimonial home thus facilitating and aiding the Petitioner in the construction expenses of the matrimonial home. It is to be observed that a loan of SCR 50,000.00 had been taken by the Respondent as borne out in her evidence towards the wiring of the house which adds value to the said matrimonial home.

[23] There is no doubt from the evidence before me that both the Petitioner and the Respondent contributed towards the construction of the matrimonial house and the other expenses in the matrimonial home. Case law indicates, in deciding issues in respect of the division of matrimonial property, one must not only consider the monetary contributions

made by each party but other circumstances as well. The age of parties, the prospect of future earnings of either party, the length and duration of the marriage between the parties, are matters also to be taken into account. In this instant case the resulting divorce and difficulties faced by the Respondent in having to adjust herself to a new way of life, without the security of a husband are factors Court have to consider as held in the case of Paul Florentine v Laurence Florentine (SCA 4/1990) [1991] SCCA 2 (11 October 1991). In this instant case the Petitioner states in evidence his age is 53 years and the Respondent states she is 49 years of age. They were married for a period of 23 years.

[24] In the case of Samori v Charles (SCA 38 of 2009) [2012] SCCA 35 (7 December 2012), the Seychelles Court of Appeal held as follows:

“We have no reason to interfere with any of the above findings of fact made by the learned Trial Judge as regards the financial contributions made by the two parties to the marriage. But a marriage is not only about financial contributions, it is also about love, of friendship, of security, of commitment, of moral and emotional support; which combine together to make a success of the lives of the two people to the marriage. These are matters that cannot easily be measured in monetary terms and also cannot be ignored when a court is called upon to make a determination on matrimonial property.”

[25] I also draw reference to the case of Marie Andree Renaud v Gaetan SCA 48 of 1998 as referred to in Hoareau v Hoareau (SCA 37 /2011) [2013] SCCA 5 (3 May 2013) which held that the duty of Court, at the stage of apportioning matrimonial property upon the dissolution of marriage, is to ensure a party to a marriage is not put at an unfair advantage. It is the view of this Court too that each party should be placed in a position where the party is able to maintain a fair and reasonable standard of living, commensurate or near the standard the parties maintained before the dissolution. It is clear from the evidence before this Court that the Respondent at present is in a position of disadvantage due to her income being less than when the Petitioner was with her. On the other hand the Petitioner too is at a disadvantage as he has left the matrimonial home which was partially built by him.

[26] Although evidence in respect of the assaults committed by the Petitioner on the Respondent exist, it is clear that the Courts have taken the necessary and needful action by imposing imprisonment on the Petitioner and ordering the Petitioner to pay compensation to the Respondent. There is no necessity for this Court to revisit these issues again.

[27] Having considered all the aforementioned facts and for the reasons given herein, this Court is satisfied that both the Petitioner and the Respondent are entitled to a half share each of the matrimonial property valued at 1,460,000.00 referred to in the valuation report of the Quantity Surveyor Mr Nigel Roucou dated 25 June 2025. It is also in evidence that the Respondent is presently living in the said matrimonial home and the Petitioner is living elsewhere and will not be coming back as the parties are now divorced.

[28] Therefore, the Respondent is to pay a sum of SCR 730,000.00 (seven hundred and thirty thousand) to the Petitioner being his half share of the matrimonial property. Legal interest to accrue from the date of this judgment.

[29] Both parties to bear their own costs.

Signed, dated and delivered at Ile du Port on this 6th day of March 2026.



M. Burhan J