

SUPREME COURT OF SEYCHELLES

Reportable

[2025]

MA91/2024

(Arising in DC139/2023)

In the matter between:

MARIE BODWELL

(rep. by Mr Rajasundaram)

Applicant

versus

JONAS BODWELL

(rep. by Mr Chang Leng)

Respondent

Neutral Citation: *Bodwell v Bodwell* MA91/2024 (Arising in DC139/2023) [2025] 13th March 2025

Before: Madeleine, J

Summary: Leave to apply for property order out of time

Heard: 13th March 2025

Delivered: 13th March 2025

ORDER

Accordingly, in terms of Rule 34 (1) of the Matrimonial Rules, 1993 I grant the Applicant leave to file her application for a property order. The said application shall be filed within two weeks of this ruling.

RULING

MADELEINE, J

Introduction

- [1] This Ruling arises from the application of Marie Jeolique Noela Bodwell, the Applicant herein, for an “*order that the delay of 2 months and 2 weeks in filing the main application claiming share on matrimonial home on Title H4429 be condoned*” and “*to take the application on file for further proceedings*”.
- [2] The Application is opposed by Jonas Bodwell, the Respondent herein.

Affidavit of Applicant

- [3] The Applicant’s Affidavit shows that the Applicant and the Respondent are the proprietors of the land comprised in title no. H4429 situated at Ma Constance, Mahe as per produced Certificate of Official Search dated 5th July 2022. The matrimonial home has been built on the said H4429. The marriage of the parties was dissolved by an order of the Supreme Court made on 3rd October 2023 and made absolute on 30th November 2023 as per Certificate of the Registrar of the Supreme Court dated 30th November 2023 produced.
- [4] The Applicant also states that the Respondent occupies the matrimonial home built on the said title no. H4429. She spent a relatively large sum of money to get the property valued a qualified quantity surveyor, Ms Cecil Bastille. The property has been valued in the sum of SCR3,264,000.00/- as per report dated 31st January 2024 produced. The Applicant further states that she only received the report during the second week of February 2024, whereupon she started negotiating with the Respondent for an amicable settlement. Negotiations were protracted and proved futile.
- [5] In support of her application, the Applicant seeks the Court’s consideration of the following factors. One, that it took time for the surveyor to value the property and submit a report. Two, that she only received the report during the second week of February 2024 and three, that she engaged in negotiations, in good faith, with the Respondent resulting in the lapse of

the time limit. According to the Applicant the reasons for the delay are genuine and valid with no fault or negligence on her part. The delay of 2 months and 2 weeks is minimal. The Applicant will be severely prejudiced if such delay is not condoned whereas the Respondent will not be prejudiced. In fact, the Respondent's share in the property will be protected when the Court condones the very minimal delay involved.

Affidavit of the Respondent

- [6] The Respondent's Affidavit in reply confirms the Applicant's Affidavit on the following matters. One, that the Applicant in the main cause for her share in the matrimonial home fully situated on title H4429 at Ma Constance, Mahe, Seychelles against the Respondent. Two, that the marriage of the parties has been dissolved on 3rd October 2023 and the dissolution was made absolute on 23rd November 2023. Three, that the Respondent still resides in the matrimonial home on the property.
- [7] The Respondent states that the Applicant also resides in the matrimonial home along with their daughters.
- [8] The Respondent however denies that there were any negotiations between the Applicant and himself relating to their matrimonial home. He states that he only became aware of the Applicant seeking her share in the property when he received notice of the present application. He denies having any knowledge of the Applicant spending any large sum of money to obtain a valuation of the property from a Quantity Surveyor, or of the Applicant's attorney having informed her that she had two months to apply for a share in the matrimonial property for which valuation report was necessary and that upon being so informed the Applicant had immediately engaged the services of quantity surveyor Cecile Bastille to carry out the said valuation. It is also denied that it took the surveyor time to carry out the valuation

and submit a report dated 31st January 2024 which was only received by the Applicant in February 2024.

- [9] The Respondent further states that *“even if there were negotiations between us, it did not prevent the Applicant from filing an application in the Supreme Court.”* and that it took the Applicant a further two months from receipt of the valuation report to file the notice of motion. The delay by the Applicant is of her own making and she has no valid excuse for being out of time.
- [10] The Respondent states that he has been advised by his Counsel and verily believes to be true that the Applicant’s Notice of Motion is unknown in law. There are no provisions in the civil code nor in the Matrimonial Causes Rules for the court to condone the delay but for leave to have her application for a share in matrimonial property heard outside the prescribed time limit. Accordingly, the application is defective, and should be dismissed with costs.

Submissions

- [11] The Applicant submits that there is no basis for the Respondent’s objection that the application is unknown in law. The Applicant relies on Rules 20 and 34(1) of the Matrimonial Causes Rules and the case of *Gangadoo v Gandoo (MA24/2022) [2023] SCSC 187 (10 March 2023)* to submit that the application has been brought by way notice of motion in order to condone the delay by leave of the court. The Applicant also submits that while the Applicant has given the reasons for the delay, the Respondent has not raised any serious objections to the grant of leave.
- [12] The Respondent relies on rules 20 and 34(1) of the Matrimonial Causes Rules to submit that the application is defective and does not warrant consideration by the court. The Applicant should have asked for leave of the court to file the application out of time. The Respondent referred to the case of *Rosita Parcou v Jill Laporte & Or [2021]* to the effect that if leave has not been specifically sought, the court cannot grant it. Accordingly, in asking the court to condone delay, the motion is misguided and erroneous. The Respondent further submits

that if it is minded to overlook the defect, there are no valid reasons for the delay in bringing the current application as rules of court should be followed for resolution and finality of disputes. In support, the Respondent referred the court to the case of *Marie-Therese Hossen v Benjamin Choppy* [2023] SCA 38.

Law and Analysis

- [13] Based on the notice of motion and supporting affidavit of the Applicant and the Respondent's reply and Affidavit, the first issue that arise for determination is *whether the application is competent for consideration by the court?*
- [14] The Respondent states that the application is defective as there are no legal provisions for a court to "*condone the delay of two months and 2 weeks*" as stated on the Applicant's Notice of motion.
- [15] I agree that the Notice of Motion and caption thereof do not reproduce the exact wording of the procedure that is being invoked. I also cannot ignore that, ex facie, the Notice of Motion is filed under the "*Matrimonial Causes Rules & Articles 258 & 259 of the Civil Code of Seychelles*". The exact rule of the Matrimonial Causes Rules under which the application is moved has not been particularised but both Articles 258 and 259 of the Civil Code of Seychelles Act are concerned with property orders.
- [16] While the Notice of Motion and supporting affidavit refers to condoning delay and for further proceedings to continue, the relief sought therein is not alien to our law. It is in effect the same relief that the Respondent refers to in his Affidavit in response, namely leave to file an application for a property order out of time.

[17] In the case of *Vintigadoo Gangadoo v. Vintigadoo Gangadoo*¹ the Supreme Court, per Carolus, J, stated the following on the applicable procedure for property orders upon the repeal of the Civil Code of Seychelles, Act (Cap 33) and the Matrimonial Causes Act, 1992

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“[11] Prior to the repeal of the Civil Code of Seychelles Act 1976, and its replacement by the Civil Code of Seychelles Act 2020 (Civil Code 2020), matrimonial matters including those involving matrimonial property were dealt with under the Matrimonial Causes Act, 1992, and the Matrimonial Causes Rules, 1993. With the enactment of the Civil Code 2020, which came into operation 1st July 2021, the Matrimonial Causes Act was repealed and certain of its provisions were imported into the Civil Code 2020 with some changes to such provisions. Hence matrimonial causes and matters involving matrimonial property which were filed as from 1st July 2021 are now dealt with under the Civil Code 2020. Section 9 (2) of the Civil Code of Seychelles (Consequence of Enactment) Act 2021, further provides that “[s]ubsidiary legislation made under the Matrimonial Causes Act in force at the commencement of this Act will continue in force under the Civil Code of Seychelles Act 2020 (Act 1 of 2021) in relation to matrimonial and en menage causes.”. Hence the Matrimonial Causes Rules, 1993, are still applicable to matters relating to property of the parties or one of the parties to a marriage, after the dissolution of such marriage unless the rules are inconsistent with any provision of the Code as provided for in Article 4 of the Civil Code 2020 which provides that “Unless otherwise provided expressly or by necessary implication, where there is an inconsistency between a provision of the Code and a provision in any other enactment, the provision in the Code prevails”. The import of Article 4 is that where a substantive provision of the Matrimonial Causes Rules has not been imported into and has been omitted from the Civil Code 2020, any rule or rules in the Matrimonial Causes Rules, made pursuant to that substantive provision will be of no effect, and cannot be acted upon.

[12] Rule 34(1) of the Matrimonial Causes Rules provides as follows:

¹(MA34/2022) (2023) SCSC187 (10 March 2023)

(34) (1) *An application ... 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 ... may be made by the petitioner at any time after the expiration of the time for appearance to the petition, but no application shall be made later than two months after order absolute except by leave. Underlining is mine.*

[13] Rule 4(1) (h), (i) or (j) which are referred to in rule 34(1) do not apply to the circumstances of the present case but rule 4(1) (f) provides as follows:

(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; Emphasis added.*

[14] *I note that section 20(1)(g) of the Matrimonial Causes Act which is the enabling provision for rule 4(1)(f) was not imported into the Civil Code 2020 when it was enacted, and that the remedy under that section and consequently rule 4(1)(f) is no longer available. However, the Civil Code 2020, does provide for property orders in section 259. I therefore find that rule 34(1) which sets a time limit of two months after order absolute for filing of applications in relation to property would apply to such property orders.*

[15] Rule 20 of the Matrimonial Causes Rules further provides that:

(20) *No pleading shall be filed out of time without leave. Applications for leave shall be made by motion supported by affidavit.*

(Emphasis added)

- [18] Based on Rule 34(1) read with Rule 20 of the Matrimonial Causes Rules, 1993 as interpreted by Carolus J in *Vintigadoo Gangadoo*², I am satisfied from the substance of the Notice of Motion and supporting affidavit that the Applicant intends to apply for a property order under the Civil Code of Seychelles Act. I am also satisfied that she makes the current application, by way of notice of motion supported by affidavit, because the time limit for application for such property orders has lapsed. Unless she obtains leave of the Court, she cannot file her application for property order(s).
- [19] Notwithstanding the wording used, which in my view is undesirable as opposed to rendering the Application fundamentally defective, the merits of the Application can be considered by the Court under the relevant provisions of the Matrimonial Causes Rules, 1993.
- [20] The second issue that arise for determination is *whether there are grounds for the relief sought*. Since the conditional order of divorce was made absolute on 23rd November 2023, the application for a share in the matrimonial property should have been made no later than 23rd January 2024. The Applicant's Notice of Motion and supporting Affidavit were filed on 18th April 2024, over two months and half after the time limit of two months after the absolute order of divorce.
- [21] I consider the Applicant's evidence that she only received the report of the Quantity Surveyor dated 31st January 2024 during the second week of February 2024. I also consider the Respondent's objection that upon receipt of the said report it took the Applicant a further two months, until 18th April 2024, to file the current application. I find that there is merit in the Applicant's evidence that the delay in filing the present application is also due to negotiations between the parties to reach an amicable settlement after she received the report. Although the Respondent initially denied that there were any discussions between the parties, he goes on to admit that the discussions should not have prevented the Applicant from filing the application in court –

² (supra n.1)

“4. Paragraph 3 of the Affidavit is denied and the Applicant is put to the strict proof thereof. Following our divorce, there were no discussions or negotiations whatsoever between the Applicant and I relating to our matrimonial home at Ma Constance. It was only when I received this Notice of Motion that I was aware that the Applicant was seeking a share in the matrimonial home.”

“8. Paragraph 8 of the Affidavit is denied and the Applicant is put to strict proof thereof. I repeat paragraph 4 above. I further add that even if there were negotiations between us, this did not prevent the Applicant from filing an application in the Supreme Court. Moreover, even when the Applicant received the evaluation from Cecile Bastille, it took her a further 2 months to file this Notice of Motion.”

[22] Based on the above, I find that the delay in bringing the current application is not of the Applicant's own doing and not without valid excuse. Also, the delay involved in bringing the present application is not long, being over two months and a half after the time limit. Furthermore, I find that the present application is clearly distinguished from the case of *Marie Therese Hossen v Benjamin Choppy* relied upon by the Respondent. In *Hossen v Choppy*, the application for ancillary relief was filed 18 months after the decree absolute was pronounced and no application was made to excuse the delay. The current application is made in respect of the parties' matrimonial home situated on land parcel H4429 which, according to certificate of official search produced, is co-owned by Applicant and Respondent. Further, according to the Respondent, he continues to occupy the said home together with the Applicant and their daughters. In the circumstances, allowing the Applicant to proceed with the filing of her application out of time would not be prejudicial to the Respondent, and it will serve the ends of justice to do so.

[23] Accordingly, in terms of rule 34(1) of the Matrimonial Causes Rules, 1993 I grant the Applicant leave to file her application for a property order. The said application shall be filed within two weeks of this Ruling.

Signed, dated and delivered at Ile du Port on 13th March 2025



Madeleine, J

