

SUPREME COURT OF SEYCHELLES

Reportable

MA 109/2025

(Arising in MA 369/2023)

(Arising in DC 79/2023)

In the matter between:

KAYATHRI GAYATHRI CHETTY

(represented by Mr. S Rajasundaram)

APPLICANT

And

OSWALD ANDRE

(represented by Mr. J Revera)

RESPONDENT

Neutral Citation: *Kayathri Gayathri Chetty and Oswald Andre* (MA 109/2025) (13th November 2025)

Before: Adeline J

Summary: Application by notice of motion for court order to order registration of matrimonial property V17035 A4/6 in the name of the Applicant amid the failure of the Respondent to pay the Applicant her share of the value of the property within the 6 months period ordered.

Heard: Submissions by Counsels.

Delivered: 13th November 2025

FINAL ORDER

The application is dismissed with costs awarded to the Respondent.

RULING ON MOTION

Adeline J

- [1] This matter, coming up for ruling, concerns an application made by way of notice of motion dated 16th May 2025, filed into court on the 19th May 2025, by one Kayathri, Gayathri Chetty (“the Applicant”) against one Oswald Andre (“the Respondent”). In her application, the Applicant applies to this court for an order directing that, owing to non-compliance by

the Respondent with the six months period stipulated in the court's judgment dated 14th November 2024 following ancillary relief proceedings for a property adjustment order, for the matrimonial property title No V17035 A-4/6 situated at Union Vale, Mahe to be registered in her name.

- [2] The Applicant supports her application for the relief sought for by an affidavit deposed by herself, to which affidavit are exhibited some documentary evidence corroborating some of the averments made therein.
- [3] In its supporting affidavit, *inter alia*, the Appellant avers that, in matrimonial cause filed as MA369/2023 arising in DC 79/2023, this Honourable Court, in its judgment dated 14th November 2024 (exhibit GC1), its former spouse, Oswald Andre, was given the benefit of buying their matrimonial home known as V 17035 A-4/6 located at Union Vale, Mahe from her by being ordered to pay her the sum of SCR 720,000.00 and become the sole owner of that property.
- [4] The Applicant also avers, that the court was quite specific and clear in stating that, the Respondent, its former spouse, has six months from the date of the Judgment to pay her share in the matrimonial property in the sum 720,000.00 and that the deadline for such payment expired on the 13th May 2025.
- [5] It is averred by the Applicant, that the Respondent, her former spouse, failed to pay her her share within the time period stipulated in the judgment although he was reminded to do so by virtue of a letter from her attorney, by which letter, the attorney also sought for a time frame for the settlement of her share in the matrimonial property.
- [6] The Applicant avers, that the Respondent neither replied, nor paid her her share of SCR 720,000.00, and therefore failed to adhere with the order of this Honourable Court, thus entitling her to invoke other conditions in the Honourable Court's judgment, one being to pay the Respondent her share of SCR 480,000.00 in the matrimonial property and have the property registered on her sole name.
- [7] It is averred by the Applicant in her affidavit, that she verily believes that she is entitled to pay the Respondent's share of SCR 480,000.00 and that she is ready and willing to pay the

Respondent now, and the same is vouched for by her bank statement from the Seychelles Commercial Bank (exhibit GC3) wherein the available funds reflect her ability to pay the Respondent instantly while she further believes that she doesn't need to wait for another two months as stipulated in the judgment of this Honourable Court.

- [8] The Applicant, for the reasons set out in the accompanying supporting affidavit, moves this Honourable court, for an order that, pursuant to the failure of the Respondent to pay her within six months as ordered by the court, the matrimonial property comprises in title V 17035 A-4/6 at Union Vale be registered in her name.
- [9] In response, the Respondent did file an affidavit in reply, raising several issues to essentially, amongst other things, make the point that, the court cannot rely on the supporting affidavit to the motion to make determination in this matter because the affidavit is "*fundamentally defective*" and as such it should be deemed inadmissible.
- [10] *Inter alia*, the Respondent avers, that the affidavit in support of the application does not conform to the formal requirements under the Evidence Act as it fails to include the title of the case, specifically omitting the Court's name, case number, and the names of the parties. He also avers that, the affidavit also omits essential particulars such as the deponent's National Identity Number, occupation and relationship to the case, all of which are necessary to verify the deponent's identity and capacity in which the affidavit is sworn.
- [11] It is averred by the Respondent, that the affidavit lacks the mandatory opening declaration prescribed by law, noting that it merely contains the phrase "*do hereby make oath and state as follows,*" which does not satisfy the statutory form. It is further averred by the Respondent, that the exhibits attached to the affidavit are not properly verified as required by law, and that the affidavit fails to specify whether the facts deposed to be within the Petitioner's personal knowledge or based on information obtained from third parties, and in the latter case, the sources of such information are not disclosed.
- [12] The Respondent further avers that, the *jurat* is defective as it was signed before a Notary Public instead of being sworn before the same, and he therefore contends that the notice of motion is procedurally void since substantive relief of this nature must be sought by way

of a Petition under the Civil Procedure Code. In the light of the foregoing averments in the supporting affidavit in reply and in opposition to the application, the Respondent submits, that the Petitioner's affidavit is defective and should be struck out with costs, thereby rendering the motion dismissible. He characterises the Petitioner's motion as frivolous, vexatious, and an abuse of process, filed while payment was already in progress. On the merits, he argued that the Petitioner's allegation of failure to pay is both factually and legally untenable, and he denied any default.

[13] A synopsis of the background facts leading to this application is that, on the 25th October 2023, the Applicant in this matter, a divorcee, previously the Petitioner in matrimonial cause filed before the Supreme Court as MA 369/2023 (arising in DC 79/2023), commenced legal proceedings against her ex-husband, the Respondent in this matter, for a property adjustment order to settle their matrimonial property dispute.

[14] At paragraph 18 of its affidavit in support of her application for a share of the matrimonial home in MA 369/2023 arising in DC 79/2023 for a property adjustment order, the Petitioner then, did make the following averments;

"18. That I verily believe that the Respondent, my former spouse would wish to retain the use and enjoyment of the matrimonial home at Union Vale and I am advised that he is to therefore pay me my share to the tune of 70% minimum with the order of this Honourable court. I pray this Honourable court therefore to order the Respondent to pay me a sum of SCR 840,000.00 (Seychelles Rupees Eight Hundred and Forty Thousand only) that represents a 70% value and in the event of the Respondent's refusal I further pray that the Honourable court be pleased to order the matrimonial property be sold in public and I be paid the 70% value of the sale proceeds."

[15] In MA 369 of 2023 arising in DC 79 of 2023, this Honourable Court, by its judgment dated 14 November 2024 (Exhibit GC1), granted the Respondent, Oswald André, the opportunity to purchase the matrimonial property known as Title V 17035 A4/6 at Union Vale from the Petitioner. The Court ordered that the Respondent pays the Petitioner the sum of SR 720,000.00 (Seychelles Rupees Seven Hundred and Twenty Thousand only), representing 60% share, and that the Respondent would then become the sole owner of the property.

ARGUMENTS OF THE PARTIES BY WAY OF WRITTEN SUBMISSIONS.

Applicant's Submissions

- [16] The Applicant avers that the judgment is clear and specific in its terms, providing that the Respondent was given six months to pay the said sum, the deadline for which expired on 13 May 2025. The Applicant states that despite a reminder issued by her Attorney on 31 January 2025 (Exhibit GC2), the Respondent failed to respond and did not make the required payment.
- [17] The Applicant maintains that, the Respondent's failure to comply with the Court's judgment entitles her to invoke the alternative clause contained in the same judgment, permitting her to pay the Respondent his 40% share and obtain registration of the property in her name.
- [18] She states her readiness and financial capacity to pay the Respondent the sum of SR 480,000.00 (Seychelles Rupees Four Hundred and Eighty Thousand only), as confirmed by her bank statement from the Seychelles Commercial Bank (Exhibit GC3). The Applicant further asserts that she need not wait for a further two months as the order of the Court has already matured by virtue of the Respondent's non-compliance.
- [19] The Applicant therefore prays that the Registrar of Lands and Deeds be directed to register the property, Title V17035 A4/6 in her name upon proof of payment to the Respondent. She further undertook to pay the Respondent the sum of SR 480,000.00, either directly or in such manner as the Court may direct.
- [20] The Applicant in her written submissions states that, she was also the Petitioner in the main petition for the settlement of the matrimonial home. In the main matter, registered as *MA 369 of 2023*, this Honourable Court, by judgment dated 14 November 2025, awarded the Petitioner the sum of SR 720,000.00, representing sixty percent of her share in the matrimonial property, payable by the Respondent, her former spouse. The Court further ordered that upon payment of this amount, the Respondent would become the sole owner of the property comprised in Title V 17035 A4/6. The judgment also provides that if the Respondent fails to make payment within six months from the date of the judgment, the

Petitioner would then be entitled to pay the Respondent a sum of SR 480,000.00, representing his forty percent share, and have the property registered in her name.

- [21] The judgment of this Honourable Court was delivered on 14th November 2024, which means that the six-month period for payment expired on the 13th May 2025. The Applicant maintains, that if payment was not received by that date, she was automatically entitled to enforce the alternative clause of the judgment. The Respondent, however, only made payment on 28th May 2025, as evidenced by the cheque deposit slip annexed to his affidavit, which bears the bank's stamp confirming the date of payment. This was approximately fifteen days after the expiration of the six-month deadline. The Applicant also points out that the payment was made without any prior notice or communication, which prevented her from being aware that payment was being processed. She contends, that this conduct reflects bad faith, as the Respondent appeared to be attempting to disguise his non-compliance by making a backdated or undisclosed payment.
- [22] The Applicant further submits, that the Respondent never applied to this Honourable Court for an extension of time before the expiration of the six-month period, nor did he communicate with her at any point to explain the reasons for the delay. The fact that her notice of motion was filed on 16th May 2025 and that the Respondent's payment was made only on 28th May 2025, underscores the Respondent's failure to abide by the Court's order in time and demonstrates his lack of diligence in complying with the judgment.
- [23] The Applicant argues, that the Respondent's delay cannot be excused or retrospectively validated, as doing so would undermine the authority of the Court's order. She contends, that the condition set out in the judgment was explicit and self-executing, upon failure to pay within six months, the right to ownership automatically shifts to her. She further submits, that if the Court were to deny her the benefit of this term, it would effectively reverse its own judgment and create uncertainty in the enforcement of matrimonial property decisions. The Applicant also notes, that the Respondent has not filed any motion for an extension of time or any other ancillary relief that would justify his non-compliance with the Court's order.

- [24] On the second issue regarding the form of her affidavit, the Applicant rejects the Respondent's contention that her affidavit is defective for not including the declaration "solemnly declare." She clarifies, that she never claimed to be of the Hindu faith, and that such wording is only required when a deponent is Hindu, as provided under the Evidence Act. Therefore, the Applicant maintains, that the objection to the form of her affidavit is unfounded.
- [25] The Applicant accordingly prays that this Honourable Court allow her notice of motion dated 16th May 2025 and order that the property comprised in Title V 17035 A4-6 be registered in her name. She undertakes to pay the Respondent the sum of SR 480,000.00, representing his forty percent share, and requests that suitable directions be issued to the Registrar of Condominium Property to complete the registration of the title in her favour.

Respondent's Submissions

- [26] The Respondent contends, that the Petitioner's calculation of the six-month period prescribed in the judgment is mathematically incorrect, explaining that six months from the date of the judgment, being 14th November 2024, would expire on 15th May 2025, and not 13 May 2025 as alleged. He therefore submits, that the motion was filed prematurely while payment was in transit, showing the Petitioner's lack of good faith. He further explains, that the delay in paying the Petitioner's share was not deliberate but was caused by administrative and systemic delays that were beyond his control.
- [27] The Respondent states, that even before the judgment, when *MA 369 of 2023* arising in DV 79 of 2023 was still pending, he had already been in discussions with his bank regarding his eligibility for a loan. The bank, however, advised him to return once the Court had delivered its judgment. Following the delivery of the judgment on 15th November 2024, the Respondent approached his bank and informed the loans officer that the case had concluded, whereupon he was instructed to submit a copy of the judgment. He explains that, despite his Counsel's daily follow-ups, he only received the certified Court order on or about 20th January 2025, two months after the judgment was delivered.

- [28] The Respondent also states, that he officially submitted his loan application on 22nd January 2025, which is now shown as (Exhibit EOA2), and that the loan was approved on 30 January 2025 for the amount of SR 576,000.00, representing 80 percent of the total due amount of SR 720,000.00, with the balance to be financed personally by him. He was invited to sign the loan agreement on 7th February 2025, which he did, and this document is now produced as (Exhibit EOA3). The bank, as part of the process, also required him to obtain life and property insurance, and the policies are now produced as (Exhibit EOA4).
- [29] The Respondent explains, that as part of the insurance requirements, he had to produce a copy of the property valuation report which had been submitted during the hearing of the main matter by the Petitioner. Since his Counsel informed him that they had not been served with a copy of the valuation report, he requested one from the Petitioner on 20 February 2025, but she failed to cooperate. Consequently, he had to obtain a copy from the Court, which caused further delay. He eventually received it on or around 28 February 2025, and the document, bearing the Court's handwritten exhibit number and date, is now produced as (Exhibit EOA5).
- [30] The Respondent further states, that both parties were required to appear before the bank's Attorney, Mr. Rivard Nariman, on the 27th March 2025 to sign the land transfer documents. However, he was later informed by the bank officer, Ms. Dorian Bibi, that when the Petitioner attended before the bank's Attorney, she refused to sign the transfer documents because her address was incorrectly stated. This required him to return to the bank on the 3rd April 2025 to re-sign the corrected documents, resulting in further delays.
- [31] Due to these delays, the Respondent was required to pay the applicable stamp duty and legal fees on 16th April 2025, the payment form being annexed as (Exhibit EOA6). Additional delays then arose from the Registration Division, which took time to register the land transfer into his sole name and to record a first-line charge in favour of the bank as security. The bank, in turn, required completion of these formalities before releasing the funds.
- [32] The Respondent states, that the loan funds were finally disbursed into his account on 19th May 2025, and he was provided with the repayment plan, the funds transfer application,

the loan disbursement advice, and the amortization schedule, all of which are shown as (Exhibit EOA7). Following the disbursement, the Respondent proceeded to make payment to the Petitioner for her share of the matrimonial property, as evidenced by Exhibit EOA1, in compliance with the judgment of this Honourable Court dated 14th November 2024. He submits that the delay in payment was therefore caused entirely by administrative and procedural factors beyond his control.

- [33] The Respondent further avers that the Petitioner approached the Court without clean hands and with no genuine intention of retaining the property, as evidenced by her conduct in the main case *MA 369 of 2023* arising in DV 79 of 2023. He adds that immediately after the judgment, the Petitioner's Attorney wrote to him (see Exhibit GC2) requesting items that had been jointly purchased and even sought to remove a built-in oven from the property, indicating her lack of interest in remaining in the home.
- [34] The Respondent denies the Petitioner's claim that there had been no communication regarding the loan. He maintains that he had instructed his Attorney to keep the Petitioner's Attorney informed of the progress of the loan application and that he personally sent an email to the Petitioner on 10 February 2025, requesting her banking details and the valuation report. This email, now shown as (Exhibit EOA8), demonstrates that the Petitioner was fully aware of his ongoing efforts to obtain the loan and settle her entitlement.
- [35] The Respondent contends, that throughout the process, he acted in good faith and took all necessary steps to comply with the Court's order, and that the Petitioner was at all material times aware of his intention to pay her share in the matrimonial property through financing from the bank. He therefore prays that the Honourable Court strike out the Petitioner's affidavit and its exhibits for non-compliance with the Evidence Act, dismiss the motion with costs for abuse of process and material non-disclosure, declare that he has fully complied with the judgment of 14 November 2024, and award punitive costs against the Petitioner for bad-faith litigation.
- [36] The Respondent concludes his affidavit by affirming that it was made solely to confirm the facts set out therein and for no improper purpose, and that he made the declaration

conscientiously, believing it to be true and knowing that it has the same force and effect as if made under oath pursuant to the Seychelles Evidence Act, Cap 74.

- [37] The Respondent, in his submissions also addresses the affidavit filed by the Petitioner and requests that it be struck out on the grounds of non-compliance with both procedural and substantive legal requirements. The Respondent contends, that the affidavit is defective in form and substance, rendering it inadmissible as evidence before the Court.
- [38] The Respondent submits, that the affidavit filed in support of the Petitioner's motion fails to comply with the mandatory formalities prescribed by the Evidence Act and the Civil Procedure Code. It omits several essential particulars, including the name of the Court, the case number, and the full names of the parties. According to Order 41, rule 1(1) of the White Book, every affidavit sworn in a cause or matter must be entitled in that cause or matter, and the omission of such particulars renders the affidavit void for uncertainty, as it cannot be properly identified as relating to these proceedings.
- [39] It is submitted by the Respondent, that in *Onezime v Attorney General & Government of Seychelles (SCA CL 3 of 2021)*, the Court of Appeal underscored the need for strict compliance with the Evidence Act, stating that any affidavit intended for use in judicial proceedings must meet all statutory requirements, including proper authentication and the inclusion of a valid jurat. Similarly, the affidavit filed by the Petitioner fails to include her National Identity Number, occupation, or relationship to the proceedings, all of which are legally required to establish the deponent's capacity and the authenticity of the sworn statement. Order 41, rule 1(4) provides that every affidavit must be expressed in the first person and must state the place of residence and occupation of the deponent, or, if unemployed, their description. Where the deponent is a party to the cause or is employed by a party, that fact must also be stated.
- [40] The Respondent submits, that in *R v Faure (MC 11 of 2021) [2023] SCSC 191*, Adeline J dismissed an affidavit because the deponent had omitted her occupation and residence. The Respondent further argues that the Petitioner's affidavit lacks the mandatory opening declaration required under the Evidence Act, namely "*I do solemnly, sincerely, and truly declare.*" Instead, the Petitioner uses a vague phrase, "*do hereby make oath and state as*

follows,” which fails to meet the statutory standard applicable to affidavits filed before this Honourable Court.

- [41] The Respondent submits, that an affidavit is a sworn statement of fact intended to serve as admissible evidence in legal proceedings, and therefore must strictly comply with the prescribed format and procedural requirements. The jurat attached to the Petitioner’s affidavit is defective, as it was signed before a Notary Public rather than being properly sworn before an authorised officer. This procedural irregularity, the Respondent argues, goes to the very root of the affidavit’s validity. Order 41, rule 1(8) of the White Book provides that every affidavit must be signed by the deponent, and the jurat must be completed and signed by the person before whom it is sworn.
- [42] In support of this argument, the Respondent relies on the decision of Pillay J in *Michel v Michel* (MA 399/2019) [2020] SCSC 303, which reaffirmed that affidavits are sworn evidence and must conform to the evidentiary requirements established by law. The Court there relied on *Elmastry & Anor v Hua Sun* (MA 195/2010) (*arising in C 13/2014*) [2019] SCSC 962, as well as on *Daniella Lablache de Charmoye v Patrick Lablache de Charmoye* (Civil Appeal SCA MA 08/2019) [2019] SCSC 35, where Twomey CJ observed that “*affidavits are sworn evidence and evidential rules for admission cannot be waived.*” In *De Charmoye* [ibid], the Court of Appeal found the affidavit defective in both form and content and declared it inadmissible due to the failure to exhibit referenced documents, defects in the *jurat*, and the omission of the deponent’s address, occupation, and proper title of the matter.
- [43] The Respondent further contends, that the affidavit suffers from substantive deficiencies. The exhibits attached have not been duly verified by the deponent and have not been properly referenced, affirmed, or authenticated in accordance with the procedural requirements governing the admissibility of documentary evidence. It is the Respondent’s submission, that an Applicant must substantiate any motion with evidence capable of supporting the averments made. Practice Direction 32 of the White Book requires that when a deponent produces an exhibit, the affidavit must include a clear statement identifying the exhibit, such as “*there is now shown to me marked the (description of the*

exhibit).” In this instance, the Petitioner’s affidavit contains unsubstantiated assertions unsupported by corresponding exhibits, and the averments stand as bare allegations lacking evidential weight.

- [44] The Respondent further submits, that the affidavit fails to distinguish between facts within the deponent’s personal knowledge and those based on information or belief, nor does it disclose the sources of such information. This omission constitutes a breach of the duty of full and frank disclosure. Order 41, Rule 5(1) provides, that an affidavit may contain only facts which the deponent is able, of his or her own knowledge to prove. Sub rule (2) allows, in interlocutory matters, for statements of information or belief, but only where the source and grounds thereof are disclosed. The Respondent contends, that the Petitioner’s affidavit fails to meet this threshold.
- [45] The Respondent argues, that the entire application is procedurally void, as substantive relief of this nature must be sought by way of a petition rather than through a notice of motion supported by an irregular affidavit. The Applicant’s application, therefore, is unsupported by competent evidence and that constitutes an abuse of the Court’s process.
- [46] The Respondent maintains, that the deficiencies in the affidavit are not mere technicalities but fundamental defects that strike at the core of its evidentiary value. The courts have consistently held that strict adherence to prescribed procedural requirements is essential to ensure that only properly authenticated and valid evidence is admitted. The failure to comply with these requirements, he argues, cannot be cured by amendment or by the exercise of judicial discretion in favour of a non-compliant party.
- [47] In light of the foregoing, the Respondent prays that the affidavit filed by the Applicant be struck out in its entirety for non-compliance with the mandatory requirements of law. He further prays that the application be dismissed as unsupported by competent evidence and as being fatally defective in both form and substance, and that costs be awarded to the Respondent

LEGAL ISSUES PRESENTED AND COURT’S REASONING AND ANALYSIS.

- [48] Following the Respondent's failure to comply with the Court's order within the stipulated period, the Applicant filed a notice of motion dated 16 May 2025, asserting that the Respondent had failed to pay her the sum of SR 720,000.00 within six months as ordered by the Court. The Petitioner therefore sought for an order directing that the property be registered in her name. The Respondent opposes the motion on several grounds, and one of the issues before the Court is whether the Petitioner is entitled to rely on the terms of the judgment and have the property registered in her name as a result of the Respondent's failure to make timely payment.
- [49] Therefore, the affidavit in reply filed by the Respondent, Mr. Oswald André, is central to the determination of the issues. In his response, the Respondent does not dispute that payment was delayed but instead explains the timeline and administrative processes involved in securing a loan to comply with the judgment. He asserts, that the delay was due to procedural requirements and not willful disregard of the Court's order.
- [50] The matter before the Court raises two main issues; first, the procedural objection advanced by the Respondent regarding the alleged defects in the Applicant's Affidavit, and second, the substantive question of whether the Respondent's failure to comply with the six-month payment deadline under the judgment in MA 369 of 2023 entitles the Applicant to have Title No. V17035 A4-6 located at Union Vale registered in her name despite her subsequent receipt of payment.
- [51] The Respondent contends, that the Affidavit filed in support of the notice of motion is defective and should be struck out for non-compliance with the procedural requirements prescribed under the Evidence Act and the Seychelles Code of Civil Procedure. It is alleged that the Affidavit omits the title of the cause, the case number, the deponent's occupation and National Identity Number, and the mandatory opening declaration as prescribed by law. The Respondent further contends, that the *jurat* was improperly executed before a Notary Public and that the exhibits attached were neither verified nor properly identified by the deponent. These omissions, the Respondent submits, render the Affidavit inadmissible and the entire motion procedurally void.

- [52] While the Court acknowledges the importance of compliance with procedural form, it must also be guided by the overriding principle that form should not prevail over substance where the purpose of the procedural requirement has been substantially met and no prejudice has been caused. Order 41 of the Rules of the Supreme Court (RSC 1965), which guides affidavit practice in Seychelles, as well as comparable provisions in the UK Civil Procedure Rules (CPR Part 32 and Practice Direction 32), set out the essential formalities for affidavits, including proper titling, identification of the deponent, verification of exhibits, and an appropriate jurat. However, jurisprudence both locally and abroad recognises that not every formal omission renders an affidavit void. In Lablache de Charmoy v Lablache de Charmoy (SCA MA 08 of 2019) [2019] SCCA 35, the Court of Appeal emphasized that affidavits constitute sworn evidence and that defects going to authenticity or verification cannot be waived. At the same time, minor technical deficiencies which do not affect the reliability or admissibility of the sworn statement may be curable, provided they do not mislead the Court or cause prejudice.
- [53] In the present case, although the Respondent points to procedural defects in the Affidavit, the document nevertheless clearly identifies the deponent, sets out the material facts, and attaches exhibits that correspond to the averments made. There is no evidence that these defects have misled the Court or impeded the Respondent's ability to respond on the merits. The overriding objective of procedural law is to facilitate the just and efficient disposal of matters, and it would be contrary to that objective to invalidate the proceedings solely on the basis of curable irregularities. Accordingly, while in practice affidavits should strictly conform to the statutory and procedural framework, the defects alleged do not in this instance justify striking out the Affidavit or dismissing the application *in limine*.
- [54] Now focusing on the second issue raised, the judgment of MA 369 of 2023 ordered the Respondent to pay the Petitioner (now the Applicant) SCR 720,000 within six months, failing which the Petitioner would be entitled to pay the Respondent SCR 480,000 and have the matrimonial property registered in her name. It is common cause that the Respondent did not make payment within the six-month period but subsequently settled the full sum after the deadline had expired. The Applicant contends, that pursuant to the express terms of the judgment, she became automatically entitled to registration of the property in her

name upon expiry of the six-month period, while the Respondent maintains, that the delay was due to administrative and banking constraints and that payment has since been completed in good faith.

- [55] The principles governing time-bound judicial orders were considered by the Court of Appeal in *Mussard v Laurencine* (SCA 39 of 2009) [2010] SCCA 15, where it was held that an order requiring payment within a fixed period creates a right prescribed in time, and that failure to comply within the stipulated period results in the automatic lapse of that right. The Court further observes, that such a time-bound order could not be amended without the consent of the parties or by the Court on a *de minimis* rule. Once the time expires, the Court becomes *functus officio* and lacks jurisdiction to extend or vary the terms of the judgment. The principle in *Mussard* (ibid) therefore, confirms, that the Respondent's failure to pay within six months constituted a technical breach of the judgment and entitled the Petitioner, as a matter of strict interpretation, to invoke the alternate conditions.
- [56] There is comparable judgments found in foreign jurisprudence. In *Lamark v Lamark* [2024] FedCFamC1F 793, the Australian Court held that failure to meet a payment deadline in final property orders amounted to default under section 79A(1)(c) of the Family Law Act 1975 (Cth), and that belated payment, even with interest, did not undo the default. Similarly, in *Duibh v Duibh* [2024] FedCFamC1F 565, the Court affirmed that once final orders are made, the Court becomes *functus officio* and any variation must be pursued within the statutory time limits. The Supreme Court of Canada, in *Schreyer v Schreyer* 2011 SCC 35, underscored that delayed enforcement or non-compliance with financial orders in matrimonial causes may result in the loss of substantive rights. These authorities, read together with *Mussard v Laurencine* (ibid), affirm that strict compliance with time-bound court orders is generally required, and non-compliance may carry direct consequences.
- [57] However, the administration of justice must balance procedural correctness with substantive fairness. It is not disputed that the Applicant has since received full payment of the sum ordered. The delay in payment has been explained by the Respondent as arising from procedural and administrative delays in the disbursement of his bank loan, rather than

willful disobedience. In matrimonial property proceedings, the Court exercises equitable jurisdiction, and the enforcement of rights must be tempered by considerations of fairness and proportionality. To apply the doctrine of strict compliance rigidly in circumstances where the Applicant has been paid in full and has suffered no continuing prejudice would serve no equitable purpose.

- [58] In the case of *Adrienne v Pillay* (CS 36/2002) [2002] SCSC 6 (16 May 2002) the Court held that “*equitable jurisdiction is subject to equity, justice and good conscience and the Court whilst exercising it, acts as a "Court of Equity", whereas the exercise of legal jurisdiction is subject to laws and laws only and the Court acts as a Court of Law.*”
- [59] While the Respondent technically defaulted on the payment timeline, the object of the judgment, which was to ensure fair division of matrimonial assets, has now been achieved. The Court must therefore determine whether enforcement of the alternate term, namely registration of the property in the Applicant’s name, would frustrate the administration of justice. Strict adherence to the statutory framework must yield where it would lead to inequitable or unjust results, particularly, where the breach has been cured and the underlying obligation satisfied.
- [60] Accordingly, while *Mussard v Laurencine* (*ibid*) remains the governing authority on the binding nature of time-barred judgments, the present case is distinguishable on its facts. The Respondent has fulfilled his financial obligation, and the Petitioner has suffered no material prejudice. The Court therefore retains a limited equitable discretion to decline enforcement of the forfeiture clause and to consider that the purpose of the judgment has been satisfied. The balance between procedural compliance and equitable justice must always tilt in favour of fairness, good faith, and the proper administration of justice.

HOLDING AND IMPLICATIONS.

- [61] The facts and arguments presented, highlight the balance that must be maintained between strict compliance with time-bound judicial orders and the equitable principles that govern matrimonial property proceedings. While authorities such as *Mussard v Laurencine* (*Supra*) emphasise the importance of certainty and finality in judgments, the circumstances

in this matter show that where procedural delay has been remedied and no bad faith or prejudice has occurred, rigid application of enforcement provisions may not be appropriate to do justice in the case.

[62] This legal analysis, underscores the fact that, matrimonial proceedings require both, adherence to procedural rules and standards, as well as to be sensitive to fairness, and to ensure that justice is administered in a manner consistent with equity, good faith and to give effect to the original judgment.

[63] For the aforementioned reasons stated in the discussions above, this application cannot succeed and is accordingly dismissed with costs awarded to the Respondent.

Signed, dated and delivered at Ile du Port on the 13th November 2025.

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B. Adeline J.
