



IN THE SUPREME COURT OF NAURU

**AT YAREN DISTRICT
CIVIL JURISDICTION**

Civil Suit No 01/2017

BETWEEN

Sprent Dabwido

Plaintiff

and

Nita Dabwido

Defendant

Before: Judge Vaai

Date of Judgement: 13th July 2020

Case may be cited as: *Sprent Dabwido and Nita Dabwido*

APPEARANCES:

Counsel for the Plaintiff:

V. Clodumar

Counsel for the Defendant:

D. Aingimea

DECISION

Introduction

1. These proceedings are concerned with the occupation of the Matrimonial home jointly owned by the husband and wife who were married in 1997 while they were both working in Australia. On their return to Nauru they lived at the family home of the wife, continued working and commenced a tyre business in 1988 to raise extra funds to finance the

purchase of the matrimonial home. The wife later resigned from her work to assist with the tyre business. Her father had already established and managed a tyre business of his own so that the husband and wife operated from the same premises ordering and selling their own stock separately.

2. In 2002 the house, a pre-cut home purchased from Australia, was constructed and completed in 2003, which they then occupied with their daughter whom they adopted in 2008. When the house was rented out in 2012 they moved back to live with the wife's family.
3. The parties separated in 2015. At this time the house was rented out at \$5000 a month; rent was collected by the husband who kept \$2500 for himself and \$2500 for the wife and daughter. When the tenant moved out in 2016 the husband occupied the house for a short time. He moved out when the wife wanted the house for her and the daughter. In the same year, unknown to the husband, the wife rented the house to Craig Construction at \$6000 a month. He subsequently agreed to the rental arrangement provided that \$3000 was paid into the daughter's bank account and the wife kept the other \$3000. In June 2017 Craig Construction terminated the lease.
4. In December 2016 the husband commenced proceedings to dissolve the marriage. The present proceedings commenced in March 2017.
5. The husband sought orders to be declared the sole owner of the Matrimonial home. He claimed that the wife's half share of the matrimonial has been paid by him to her. He deposed at paragraph 4 of his affidavit of the 12th July 2017 which he produced in support of his claim:

(4) I do not deny that the house was built during our marriage---
 However to the fair I had left with her the following to compensate
 her for the house.

Bank of Nauru Account	\$23,000
Cash in Hand	\$18,000
Tyre business assets	\$60,000
Motor Cycle business assets	\$3,000
Christmas goods assets	10,000
Boat	\$3,000
Car	\$9,000
House Rent	\$30,000
(October 2016 - February 2017)	-
	<u>\$156,000</u>

6. No documentary evidence or any other form of information was produced to substantiate the claims.
7. In a bitterly contested fashion the wife denied the claims by the husband. She did produce copies of two ANZ bank cheques totaling \$9,378 paid to the husband when the accounts were closed. Other than that there was no documentary evidence to support her denials.

Tyre Motor Cycle Business

8. As noted above the parties sold their tyres through the tyre business of the wife's father. It was the testimony of the husband that motor cycles and spare parts were also sold. But the wife was of the view that ownership of motor cycles and spare parts involved others as well.
9. As to the claim by the husband that \$63,000 worth of tyres and motorcycle was at the shop at the time of separation the wife rebutted this by alleging that her father's log book would show that the allegation is false. The log book was not produced by the wife, nor was any calculations to verify the \$63,000 business assets, produced by the husband.

Christmas Goods Asset

10. Both parties concede there was a container of Christmas goods but it was a container shared with others. Evidence of the \$10,000 worth of goods alleged to be owned by the husband and wife in the container was not only orally claimed by the husband, it was unsupported and lacked credibility.

Cash in hand and Nauru Bank Accounts

11. It was oral, it was contested by the wife, and nothing was produced or related to the court as to how the husband calculated or verified the amounts of cash.

House Rent

12. It was not denied by the wife that she collected and used the rent monies from October 2016 to February 2017. At that time she was not working and she was supporting their daughter. It was conceded by the husband that when he discovered the lease arrangements of the house he agreed for the wife to take 50% and the other 50% for the daughter's bank account.

Discussion

13. The distribution of rental monies, earnings from the tyre business, value of the business stock at the time of the marriage breakdown, the amounts of cash at hand and in the bank accounts and the value of other matrimonial assets were all bitterly contested.

14. Unlike ordinary commercial transactions which are normally evidenced by documented records, it is inevitable that transactions which took place when the parties were happily married and divorce was never contemplated would not be evidenced in the same way. Bitterness and sour emotions factored heavily into the unreliability of the testimonies.
15. Both parties agreed to the 50% distribution. But the husband insisted that the wife's 50% has been compensated for. He bears the burden of proving on the balance of probabilities that the wife has received her half share. He has not done so. The court will therefore commence to evaluate the shares in the house on a half and half basis.
16. The court did request a valuation(s) of the house. When the husband died in May 2019 no valuation report was received. Counsels instead submitted their personal valuations which were miles apart.
17. Two valuation reports, commissioned by each party have been tendered. One report tendered by the wife valued the house at \$354,036.55. The other report gave a valuation of \$320,000. Neither report indicated which method of valuation was adopted if any. The average of both valuations is \$337,000. Half of \$337,000 is \$168,500.
18. There is no legislation in the Republic providing for division of matrimonial property on similar lines to those of neighboring countries like New Zealand and Australia. By virtue of the Custom and Adopted Laws Act 1971 the United Kingdom Matrimonial Homes Act 1967 provides some guidance. I am told that this is the first case to deal with division of matrimonial home in the Republic.
19. The English authorities which dealt with matrimonial homes in which both the husband and the wife contributed financially and non-financially favours the half and half allocation. It is a discretionary determination for the judge in view of all the relevant considerations. In "*Gissing v Gissing*¹" and "*Hesseltine v Hesseltine*²" it was recognized that half and half is not an invariable division. If some other division is fairer the court will adopt it.
20. There also appears to be a trend, which suggests that women, who are home makers and therefore sacrifice their own earning potential by being a full time mother looking after the house and children, limited to how much they can earn by diverting their time away from their careers can be entitled to greater than 50%. Being diverted away from their career has an impact on career progression as well as the difficulty of re-entering the workforce.
21. A significant factor which justifies a greater share in favour of the wife is the child of the marriage. She is twelve years of age, has always been in the care and custody of the wife, has not received regular maintenance payments and is not provided for, in terms of financial assistance, in the will of her late father.

¹ (1970) 2 All ER 780

² (1971) 1 All ER 952

In granting the wife a greater share to take account of the child, the exercise will not jeopardize any claim which the child may, on her behalf, institute against the estate of the husband.

22. In addition to the half share which the parties intended and agreed to, the wife shall be given another quarter share so that she will receive three quarter and the husband one quarter. Three quarter of \$377,000 is \$282,750 and one quarter of \$377,000 is \$94,250.
23. Since the matrimonial home is erected on the husband's family land, it is only logical that the husband's estate should pay to the wife the sum of \$282,750 but it seems obvious to the court that the estate is unable to meet the payment. As the surviving part owner of the home the wife should therefore take immediate possession of the home until satisfactory arrangement to satisfy her entitlement is finalized.
24. The court is also mindful of the fact that during his lifetime, and in the course of these proceedings the husband did describe in his affidavit dated the 28th February 2017 an altercation between himself and the wife over their home and their daughter. He deposed at paragraph 11;
"I left the premises and went to my estranged wife's house at Yaren.
After a long wait she came out blazing telling me that I have no business with the house as it belongs to our daughter. I said yes eventually when I die but I am not dead yet..."
25. I did request counsels to explore the possibility of agreement between the parties regarding the satisfaction of the wife's shares by determining the annual rental which should be deducted from the sum awarded by the court. Unfortunately an agreement could not be reached.
26. I am also informed that application for grant of probate of the will of the husband is being challenged in court; secondly the Nauru Lands Committee had proceeded to determine and distributed the estate of the husband without knowledge of the will.
In his will the husband had deemed himself to be sole owner and devised the house to his partner. I am informed by counsel for the wife that a challenge, on behalf of the child of the marriage, will be filed in court.
27. In the circumstance the court will not at this stage determine what rental shall be charged against the wife's entitlement to the house. It will await the outcome of the proceedings concerning the husband's estate. In the meantime the wife shall take immediate possession of the house.
28. If the pending proceedings are not completed within four years, either party is granted leave to seek further orders from the court.

29. There is in the courts trust account the sum of \$9,000 being rental monies paid by Craig Construction pursuant to court order. That money shall be paid to the wife for the upkeep of the child.

Orders

- (i) The estate of the husband to pay to the wife the sum of Two Hundred Eighty Two Thousand Seven Hundred and Fifty Dollars (282,750).
- (ii) The wife shall forthwith take possession of the house for herself and the child until further order of the Court at the conclusion of litigation over the husband's estate.
- (iii) Parties are granted leave to seek further orders as noted in paragraph 28 above.
- (iv) The sum of \$9,000 in the Courts trust account to be paid to the wife.
- (v) Each party to bear its own costs.



JUDGE RAPI VAAI

