

**IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CIVIL DIVISION)**

D/P NO. 4/17

IN THE MATTER of the Matrimonial Property Act 1976
(NZ) (as applied in the Cook Islands
by the Matrimonial Property Act
1991-92)

BETWEEN **CAROLINE ANNE DANIEL**
Applicant

AND **IAN ROGER ZWIES**
Respondent

Date of Hearing: 30 May 2018

Appearances: Mr M Scowcroft for Applicant
Respondent in person

Judgment (No.1): 18 July 2018

Date of Minute (No.1): 13 September 2018

Date of Minute (No.2): 17 October 2018

Date of Minute (No.3): 15 January 2019

Judgment (No.2): 29 April 2019

Date of Minute (No.4): 19 June 2019

Judgment (No.3): 9 August 2019

JUDGMENT (NO.3) OF HUGH WILLIAMS, CJ

[WILL0633]

[1] Minute (No.4) issued in this matter on 19 June 2019 read as follows:

[1] At the conclusion of Judgment (No.2) in this matter delivered on 29 April 2019 the Court, after fixing the value of the parties matrimonial property and directing how the same should be distributed made the following observations:

[93] The parties are directed to collaborate on finalising the matter, but it would appear that completion might best be effected by:

- a) confirming the matrimonial assets in the parties' sole names, other than the Suzuki, as their separate property;
- b) by Mr Zwies transferring the Suzuki to Ms Daniel;

- c) by Mr Zwies signing the necessary instrument of alienation to transfer the Matavera lease into Ms Daniel's sole name;
- d) and by Mr Zwies paying Ms Daniel \$6,857.51.

[94] However, that method of distribution is no more than the Court's suggestion and, if the parties cannot agree on the means of effecting the distribution within 20 working days of delivery of this judgment, they may file memoranda – including, if necessary, any application for charging orders – and the Court will then make the necessary orders to conclude the matter.

[2] By memorandum dated 10 June 2019 Mr Scowcroft, counsel for the applicant, advised that on 27 May 2019 the respondent, Mr Zwies, had been requested to sign the necessary documents to vest the Suzuki Swift and the Matavera lease in the applicant's sole name and was given the necessary bank details to enable payment to the applicant by the respondent of the \$6,857.51.

[3] However, on 10 June 2019 Mr Zwies indicated by email that he was not prepared to implement the orders in Judgment (No.2).

[4] Accordingly, in paragraphs 6-16 of Mr Scowcroft's memorandum – especially the last – orders were sought to implement the Court's findings by the means set out in the memorandum.

[5] The Court is prepared to accept the terms of paragraphs 6-16 of Mr Scowcroft's memorandum as an application for the orders set out in the memorandum on the grounds listed by Mr Scowcroft but, to enable the application for those orders to be considered, there will be the following timetabling orders:

- a) Mr Scowcroft's memorandum of 10 June 2019 together with a copy of this Minute, are to be served on Mr Zwies by email;
- b) Mr Zwies is to have 10 working days from his receipt of the memorandum and this Minute to file any notice of opposition to the orders sought together with supporting affidavits he may choose to file;
- c) On expiration of that period, the application in the memorandum of 10 June 2019 will be considered on the material then available;
- d) For the avoidance of doubt, the material to be considered in adjudicating on the application in Mr Scowcroft's memorandum of 10 June 2019 includes all the evidence filed in this proceeding to date, the judgments, Mr Scowcroft's memoranda – particularly that dated 10 June 2019 – and any material Mr Zwies chooses to file in opposition in accordance with the foregoing timetable.

[2] The only response to Minute (No.4) was a further affidavit sworn by Mr Zwies on 3 July 2019¹ which repetitiously reiterated arguments and submissions previously raised by him in this matter and dealt with in the various judgments and minutes already issued.

¹ Emailed direct to Chief Justice and received on 4 July 2019 at 11am (NZT)

[3] In light of that – and relying on the paragraphs mentioned in Mr Scowcroft’s memorandum of 10 June 2019 – there will be orders as follows:

- a) That pursuant to s 33(3)(c) of the Matrimonial Property Acts 1976 and 1991-2 the Suzuki Swift motorcar, registration number 8292, in the name of the respondent is vested in the applicant solely;
- b) Until receipt of Mr Scowcroft’s memorandum of 10 June 2019 the Court had not been advised of the actions Ms Daniel had taken to sever the joint tenancy of the Matavera lease previously held by her and the respondent, but in light of the information in the memorandum there will be an order pursuant to s 33(3)(j) of the Act vesting the interest of the respondent in the formerly jointly held lease dated 10 September 2013 of 3247m² of land at Te Auere Section 14B Matavera, Rarotonga in the applicant solely;
- c) There will be an order pursuant to s 33(3)(i) of the Act that the respondent pay the applicant \$6,857.51 within 14 days of delivery of this judgment with that sum to be paid directly to the applicant’s account with the Bank of South Pacific, account name Caroline A Daniel, account number 2000381224, with a further order pursuant to s 33(4) of the Act that interest accrue on that sum at the judgment debt rate of 10% p.a. from the date one month from delivery of this judgment until the date of payment; and
- d) That liberty to apply be reserved in favour of the applicant in the event of there being difficulty in sealing or implementing any of the above orders.

A handwritten signature in black ink, appearing to read 'H Williams', written in a cursive style. The signature is positioned above a horizontal line.

Hugh Williams, CJ