

CHOW -v- CHOW

High Court of Solomon Islands

(Ward C.J.)

Civil Case No. 248 of 1989

Hearing: 23 April 1991

Judgment: 6 May 1991

D. Campbell for the Petitioner

J. Corrin for Respondent

WARD CJ: The parties were divorced on 25 May 1990 and a joint custody order made for both the two children with care and control to the mother and reasonable access to the father.

The petitioner now applies for financial relief. She seeks an order as to distribution of the matrimonial property and also seeks maintenance for herself and the children. Following the filing of affidavits of means, the respondent made a written offer to settle the property but that has been rejected by the petitioner.

At the time of the divorce hearing, the respondent owned a company, JJ Autos, and the petitioner was running her own tailoring business, Stylish Ladies Tailor. There was also a business run largely by the petitioner, Honiara Cake and Biscuit Supply Co. Limited.

Orders are sought on a number of properties the values of which are agreed;

191-024-100 the matrimonial home valued at \$170,000.

191-029-106 a house at Kola'a Ridge occupied by the respondent valued at \$65,000.

191-032-27 a house used by employees of JJ Autos valued at \$28,000.

191-028-6 a second property for employees of JJ Autos valued at \$17,000.

191-026021 a commercial property in New Chinatown the petitioner claims was given to her by her father valued at \$90,000.

191-041-143 the premises of the Honiara Cake and Biscuit Supply valued at \$165,000.

The matrimonial home has been pledged as security for the overdraft of JJ Autos which currently stands at \$63,846.77 and which is also personally guaranteed by both parties.

The Honiara Cake and Biscuit Supply Company is in debt to the Bank to a total of \$23,862.65 and the Kola'a Ridge house has been pledged as security for part of that (\$10,392.40) whilst the remainder is secured on the property itself. It is agreed by both parties that the debts of this company must be paid and there will be no money for distribution at the end.

The petitioner attempted to sell the tailoring business as a going concern but was unable to do so and has sold the equipment. The proceeds were sufficient only to pay off the company debts and obligations.

JJ Autos still functions and the court has been supplied with some accounts.

There are disputes about the following matters:

1. the status of the property 191-026-21.
2. A sum of \$41,000 in a bank account of the petitioner.
3. A number of cars that the respondent has sold since the effective breakdown of the marriage.
4. A boat sold at the same time.

I can deal with these shortly. I accept the petitioner's evidence in relation to 191-026-21. It is not to be included in the matrimonial property and is the petitioner's sole responsibility.

I accept her evidence about the \$41,000. Again I do not consider it part of the matrimonial property but I do note the evidence about it in considering her overall position.

The cars and boat I shall return to later.

In a case such as this where the marriage existed for some years and both parties made a contribution to the marriage, I feel in general the property should be split equally between the parties. In the case of the residential properties that is a relatively simple order to make. The difficulties arise in relation to the businesses of the parties. Even if the court should rule that one party should receive a financial payment for his or her stake in the other's business, the business may not be able to pay that sum out without putting the business itself into financial difficulty.

Whilst I accept the petitioner gave some assistance with JJ Autos, I feel it is principally the business of the respondent. The respondent has executed a trust deed giving his two children an 80% share in the company. I feel that is a sufficient provision from the company and I order the company JJ Autos should remain undivided in the respondent's name. The petitioner's guarantee of the overdraft is to be withdrawn and the respondent is to take that over or find alternative security acceptable to the bank.

There was evidence of a number of cars which had been used by the parties and which the respondent disposed off at about the time of the marriage break-up and divorce proceedings. The petitioner gave evidence that they were sold by the respondent without any account to her and that she had prior to that had the use of them at least for part of the time. The respondent gives no further evidence on them.

I have no further evidence on the value or status of those vehicles but I feel the rapid disposition of them at that time suggests an attempt to thwart any disposition of property.

I order that the respondent supply evidence to the petitioner of the price obtained for the following cars:

6677, 6669, 8882 and 7720.

Half that value is to be paid to the wife.

I am not satisfied the car OA797 formed part of the matrimonial property and I make no order in relation to that.

A similar situation occurs with the boat. It was sold for \$38,000 apparently. I accept it was family property and I order that the respondent produce evidence of the sale price and half of that shall go to the wife.

Thus the order I make on the property is as follows:-

191-024-100 is to be shared equally between the parties.

191-029-106 is to be shared equally between the parties.

All furniture in these two properties is to be valued and divided equally between the parties or sold and the proceeds divided.

191-032-27 and 191-028-6 are to be treated as the property of JJ Autos.

191-041-143 is to be shared equally between the parties.

191-026-21 is the petitioner's property.

The \$41,000 and any other remaining proceeding or assets of the tailoring business is the petitioner's property solely.

The petitioner is to be paid a half share in the sale proceeds of the vehicles 6677, 6669, 8882 and 7720 and the boat.

There is also an application for an order for maintenance of the children.

At present the respondent is paying all the expenses for Jared and the petitioner those for Jason. In addition, the respondent is paying holiday fares in accordance with an agreement already made.

The respondent has a deposit account with AGC Finance Corporation into which he has paid and is paying a substantial sum to cover capital costs incurred by the children including their school fees. The total sum stands at more than \$44,000. That sum is to remain on deposit for that purpose and I make no order in relation to it. The petitioner tells the court she is paying about \$300 per month for Jason. In addition, the petitioner asks for some order regarding her maintenance, preferably as a lump sum. She is a business woman of some ability. She was running a successful business when they were married and continued after the marriage. She is now living in Australia and at present is not working. I feel she will be able to obtain suitable employment when she wishes in Australia. The order I have made regarding the cars and the boat will give her, I am sure, a substantial sum of money in addition to the other property disposition. I do not feel I should order the respondent to pay her more.

A similar situation applies to Jason. The respondent is already paying for Jared

and has set up a substantial deposit account for the children. He also pays the fares at holiday time. I do not feel I should order more. The financial arrangements in place at present for the children shall continue as part of this court's order.

Each party to pay its own costs.

(F.G.R. Ward)
CHIEF JUSTICE