

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

UNA MAIREAD CHINNA

Petitioner

- and -

ALEXIS GABRIEL CHINNA

Respondent

**MEMORANDUM OF JUDGMENT**

1           On this ex parte application, the Divorce Judgment shall issue.

2           In addition, the Corollary Relief Order shall issue but it is to contain only the following paragraphs from the current draft: (1) custody of the children to the petitioner; (2) access to the respondent; and (3) child support of \$100.00 per month per child. The two paragraphs relating to the claim respecting the matrimonial home are to be deleted.

3           As I said in Currie v. Currie (S.C.N.W.T. No. 6101-02281; January 3, 1995), a matrimonial property claim is not "corollary relief" as that term is used in the Divorce Act. A property claim, while it can be joined with a divorce action because of the rules adopted by this court, is still a separate claim and must be proven as would any other unliquidated claim.

4           In this application the sole proof submitted on the property claim is the following paragraph from the petitioner's affidavit on this ex parte application:

Throughout the marriage, I bore the major responsibility for the support of the family, the care of the children and the acquisition and maintenance of family property. During the marriage the Respondent and I acquired a home at Lot #122, Fort Good Hope, Northwest Territories through the Housing Assistance Plan, which is now owned free and clear of any financial encumbrances. The house is presently occupied by the Respondent. I seek an Order of this court declaring that I have a one-half joint interest in the said home and prohibiting the Respondent from selling or transferring any interest in the said home without my express written consent and approval.

5           This paragraph simply repeats a paragraph contained in the Petition. Just because it is now repeated under oath in an affidavit does not make it any more substantive in terms of evidence. This paragraph contains conclusions, not reasons. There is no supporting evidence for these conclusions in the material filed.

6           Counsel for the petitioner should set the property claim down for a special chambers date. Notice is to be given to the respondent of the date of the hearing. Such notice may be given by ordinary registered mail addressed to the respondent in care of "general delivery" in Fort Good Hope. Fifteen (15) days' notice is to be given.

7           At the chambers hearing evidence should be presented covering at least the following issues:

- (a) the current state of title and nature of holding;
- (b) the financial burden borne by each party in the acquisition, construction, and maintenance of the property;

- (c) other non-monetary contributions;
- (d) description and value of the property;
- (e) any other relevant evidence so as to assist the judge hearing the application with respect to the criteria set out in s.27(4) of the Matrimonial Property Act.

8           The evidence may be presented by way of affidavit or *viva voce*. Copies of any affidavits to be used are also to be served on the respondent by ordinary registered mail. These directions are made by me pursuant to Rule 161 of the Supreme Court Rules. Counsel is also referred to the judgment of de Weerd J. in McFaull v. McFaull (S.C.N.W.T. No. 6101-02144; September 21, 1992).

9           In the interim, the petitioner may take out an order prohibiting the respondent from selling, transferring, encumbering, or otherwise dealing with the former matrimonial home (as described in the Petition) without the petitioner's consent or an order of this court.

10           Dated this 20th day of February, 1995.

John Z. Vertes  
J.S.C.

TO: Elaine Keenan Bengts,  
Counsel for the Petitioner