

RIPTON MUZENDA
versus
MEMORY MUZENDA

HIGH COURT OF ZIMBABWE
MAXWELL J
HARARE, 17 February 2020, 19 and 28 March 2025

Civil Trial

M.A. Masona & T. Dzomba, for the Plaintiff
L.Rufu, for the Defendant.

MAXWELL J

BACKGROUND

Plaintiff and Defendant (the parties) entered into a registered civil marriage on 30 April 1994 and were blessed with two children who have since reached majority status. On 17 February 2020, Plaintiff issued summons against the Defendant claiming a decree of divorce and ancillary relief. In his declaration, Plaintiff stated that the parties have not lived together as husband and wife for a period exceeding twelve (12) months, have now lost love and affection for each other and reconciliation is no longer possible. Plaintiff also stated that, during the subsistence of their marriage, the Defendant and himself acquired one immovable property namely Stand No 679 of 35 Domboshava Road, Borrowdale which is jointly owned by the parties. In his view, it would be just and equitable that the aforesaid immovable property be sold to best advantage upon divorce and the proceeds thereof shared equally between the parties. The Plaintiff then amended his declaration on the issue of the immovable property adding that before sharing the net proceeds, they should first pay back the debts he incurred at the time the parties lived in Singapore. Concerning the movable properties acquired by the parties during the subsistence of the marriage, Plaintiff proposed what he believed would be just and equitable in the division and distribution thereof.

Defendant filed her notice of entry of appearance to Defend. In her plea, she admitted that the marriage has irretrievably broken down. She denied that the distribution plan proposed by Plaintiff is just and equitable and proposed that Stand 679 of 35 Domboshava Road,

Borrowdale be registered in the names of the parties' two children with her being awarded a life usufruct for the occupation, exclusive use and enjoyment thereof until she dies or remarries, whichever occurs first. She counter-proposed the division and distribution of the movable property.

PRE-TRIAL CONFERENCE

At the Pre-Trial Conference the parties agreed on all other issues and the following issue was referred to trial: What constitutes a fair and equitable distribution of the Parties' assets?

TRIAL

PLAINTIFF'S EVIDENCE

Plaintiff entered into a civil registered marriage with the Defendant on 30 April 1994 and they have two children who have attained majority status. He testified that during the subsistence of their marriage, the parties acquired one immovable property namely, Stand 679 of 35 Domboshava Road Borrowdale Harare in 2001 and registered it in both his and Defendant's names. Plaintiff further testified that he sold their Mitsubishi minibus to buy the stand and the rest was paid through a mortgage. He stated that Defendant hardly contributed financially in the construction of the matrimonial property, but only in 2016 and 2017 when she put up the front wall. Plaintiff also testified that, in 2008, the family relocated to Singapore following his employment with Singapore Air Lines. The Defendant was not employed and depended wholly on Plaintiff for financial support making him the sole breadwinner. In 2015, the Plaintiff was laid off from Singapore Airlines and was compelled to relocate back to Zimbabwe. Forced by the loss of employment, Plaintiff incurred significant tax liabilities which needed to be settled before relocating back to Zimbabwe. Due to responsibilities upon him and being the sole breadwinner, Plaintiff was forced by the situation to take out loans from the Development Bank of Singapore, Standard Chartered Singapore and also from his friends. Plaintiff testified that, the debts amount to a total of \$92 000.00 Singapore dollars. The Plaintiff also testified that the loans were taken in order to support the family's financial needs and obligations which benefited both parties including costs for relocating to Zimbabwe, the tax liabilities incurred in Singapore, everyday living expenses, school fees for the children and other household effects. Plaintiff further testifies that, in light of the outstanding debts, he feels it will be just and equitable for the property to be sold and the proceeds used to pay off the

outstanding loans and thereafter the remaining balance be shared equally between the parties. Plaintiff also led evidence that the parties jointly acquired several household effects and that he solely purchased three motor vehicles, namely two Volvos (one for himself and the other for the Defendant) and a Chrysler.

DEFENDANT'S EVIDENCE:

Defendant confirmed the Plaintiff's evidence as to when the parties got married and the number of children born to their marriage. The Defendant also told the court that she was the one managing the building project for their said immovable property and that she also contributed in the building of the house financially. She also gave evidence that the immovable property is registered in their joint names because she equally contributed to the acquisition and development. She further told the court that it was both parties who jointly serviced the mortgage which was over this immovable property. The Defendant in her evidence confirmed that around 2008, the parties moved to stay in Singapore where the Plaintiff had secured employment, and this was years after the couple had acquired the said immovable property. It was also her evidence that when the parties went to Singapore, she was a dependent of the Plaintiff. She disputed that she was jointly liable to pay back the loans taken by the Plaintiff over twelve years ago in Singapore. Concerning the issue of the movable properties, Defendant contended that it is just and equitable for the court to award her the Volvo because Plaintiff has disposed of their 3-tonne truck without her consent

THE LAW

The law relating to the sharing of assets between spouses is set out in section 7 of the Matrimonial Causes Act [*Chapter 5:13*]. Assets subject to distribution are those that would have been acquired by the parties during the subsistence of their marriage and are considered to belong to the family. However in terms of section 7(3) of the Act

- “(3) The power of an appropriate court to make an order in terms of paragraph (a) of subsection (1) shall not extend to any assets which are proved, to the satisfaction of the court, to have been acquired by a spouse, whether before or during the marriage—
- (a) by way of an inheritance; or
 - (b) in terms of any custom and which, in accordance with such custom, are intended to be held by the spouse personally; or
 - (c) in any manner and which have particular sentimental value to the spouse concerned.”

Section 7 (4) of the Matrimonial Causes Act sets out how the court is enjoined to have regard to all the circumstances of the case including:

- a. the income earning capacity, assets and other financial resources which each spouse and child has or is likely to have in the foreseeable future.
- b. the financial needs, obligations and responsibilities which each spouse and child has or is likely to have in the foreseeable future
- c. The standard of living of the family, including the manner in which any child was being educated or trained or expected to be educated or trained.
- d. the age and physical and mental conditions of each spouse and child
- e. the direct and indirect contribution made by each spouse to the family and any other domestic duties
- f. the value to either of the spouses or to any child of any benefit, including a pension or gratuity which such spouse or child will lose as a result of the dissolution of the marriage.
- g. the duration of the marriage.”

The Act further sets out that in distributing the assets, the court shall be reasonable and practical regarding to the conduct of the parties where it is just to do so, place the children and spouses in the position they would have been if a normal marriage had continued between the spouses.

Section 26(c) and (d) of the Constitution provides that the state must ensure that there is equality of rights and obligations of spouses during marriage and at its dissolution and in the event of dissolution provision must be made for the necessary protection of the spouses.

Article 16(1) of the Universal Declaration of Human Rights (1948) provides that men and women of full age are entitled to equal rights as to marriage, during marriage and at its dissolution. This basically shows that there must be a fair and equitable division and distribution of property at the dissolution of marriage.

ANALYSIS

THE IMMOVABLE PROPERTY

The parties are joint owners of Stand 679 of 35 Domboshava Road, Borrowdale Harare, which the property is registered in both their names. In the matter of *Ncube v Ncube* HH645-15, the court stated that

“it is common cause that jointly owned property should be shared equally between spouses.”

The Plaintiff, in his Declaration proposed that the parties' immovable property namely; Stand 679 of 35 Domboshava Road, Borrowdale Harare, be sold to the best advantage and the

net proceeds thereof be shared equally between the parties. However, the Plaintiff later amended his declaration to seek that the parties' immovable property namely; Stand 679 of 35 Domboshava Road, Borrowdale Harare be sold to the best advantage and the parties share the net proceeds thereof after deducting the debts he incurred back in Singapore. He submitted that the loans were taken to support the family's financial needs and obligations, which benefited both parties. Plaintiff in his submissions does not dispute the Defendant's indirect contribution and as the project manager of the building project for their immovable property. Professor Ncube in his book **Family Law in Zimbabwe** at p178, said: -

“Our courts when formulating a legal approach to the re-allocation of property on divorce, should not attempt to attach a monetary value to the intangible and unquantifiable domestic contributions of a housewife.”

The performance of domestic duties encompasses all aspects of a spouse's role in the life of the other spouse and the children in their daily lives and such contribution to the family should not be disregarded. In the case of *Manavira v Manavira* HH803-16, where the parties' marriage was for 29 years, the court at page 5 of the cyclostyled judgement said;

“After a careful analysis of cases on this aspect I am of the view that the longer the duration of the marriage, the lesser weight to be attached to direct contribution. The value of indirect contribution increases with the length of time. It may also be said that where a marriage has substituted for a longer time such as in this case other considerations such as the needs and expectations of the parties should receive serious consideration”

Considering the indirect contributions made by Defendant to the parties' marriage even at the time when the parties were living in Singapore for the period between 2008 and 2015, I am of the view that the Defendant is entitled to an equal share of the property. Defendant proposed that the immovable property namely Stand 679 of 35 Domboshava Road, Borrowdale Harare be transferred and registered into the names of the parties' two minor children with her having a life usufruct for the use and enjoyment of the same until she dies or remarries. If the parties were in agreement, there would not have been any problem. A party cannot dictate what happens to the other's share. Defendant cannot impose what happens to Plaintiff's share. She cannot enjoy a life usufruct for the use and enjoyment of the property until she remarries or dies against Plaintiff's wish. Awarding the Defendant a lifetime usufruct is therefore not justified.

THE LOANS

Defendant was a dependent of the Plaintiff at the time Plaintiff acquired personal loans. Plaintiff stated in his evidence that the loans were taken to support the family's financial needs and obligations which benefitted both parties. He stated that the needs and obligations included costs of relocating to Zimbabwe, tax liabilities incurred in Singapore, everyday living expenses, school fees for the children and other household needs. Plaintiff testified that on returning to Zimbabwe he was unemployed for a period of one year and four months during which period they lived on loan money. The Defendant confirmed that when the Plaintiff took the loans, she was a dependent. She confirmed being present when discussions with their friends, Bradley and Veronica Odom, took place, leading to a loan from them. She confirmed that the Odoms deposited the money into the Plaintiff's account. She argued that the Odoms knew that she was not employed and that they were not expecting any repayment from her. Under cross-examination, she confirmed that the loan from the Odoms came at a time both of them were not employed. In my view, the circumstances of this case are such that there should be an equal distribution of both assets and liabilities. In terms of section 7 (4) (b) of the Matrimonial Causes Act [*Chapter 5:13*], the court is enjoined to have regard to

“The financial needs, obligations and responsibilities which each spouse and child has or is likely to have in the foreseeable future.”

Plaintiff stated the obligations that exist. Considering how the family needs were met over the thirty years of marriage, I am of the view that the justice of the case is that the outstanding loans be deducted from the proceeds from the sale of Stand 679 of 35 Domboshava Road, Borrowdale Harare and that the parties share the residue therefrom.

MOVABLE PROPERTIES

Plaintiff agreed to the distribution of the movable property proposed by the Defendant in her Plea save for the issue of the Chrysler motor vehicle which he insisted it be awarded to him. The Defendant on the other hand submitted that the Plaintiff can be awarded the Chrysler motor vehicle on condition that she is awarded two Volvo motor vehicles. Defendant argued that after Plaintiff left the matrimonial home with the Chrysler motor vehicle, he damaged it beyond repair. She contended further that it is just and equitable for the court to award her the two Volvo motor vehicles because the Plaintiff had disposed of a 3-tonne truck without her consent.

As stated earlier, property acquired during the subsistence of this marriage should be shared equally between the parties. The parties jointly acquired the three motor vehicles in question and they ought to be shared equally between them. I am of the view that it is just and equitable that each party gets a Volvo and the Chrysler be sold and the net proceeds be shared equally between the parties.

DISPOSITION

In the result it is ordered as follows:

1. A decree of divorce be and is hereby grant
2. The immovable property namely; Stand 679 of 35 Domboshava Road, Borrowdale Harare shall be valued by a valuer agreed to by the parties within seven days of this order failing which by one appointed by the Registrar on the list of valuers on his panel within 30 days of the order. The costs of the valuation shall be met by the parties in equal shares.
3. The parties shall appoint an Estate Agent to sell the immovable property namely Stand 679 of 35 Domboshava Road, Borrowdale Harare within seven days of receiving the valuation report. If they fail to agree, one will be appointed by the Registrar of the High Court from the list of registered Estate Agents.
4. The net proceeds shall be used to pay back the debts owed to the Development Bank of Singapore, the Standard Chartered Bank of Singapore and Bradley and Veronica Odom, which amounts to ninety-two thousand (92000.00) Singapore dollars and the balance shall be shared equally between parties.
5. Each party shall retain the Volvo motor vehicle registered in their name.
6. The parties shall agree on the value of the Chrysler motor vehicle within seven days of this order failing which it shall be valued by a valuer agreed by them within seven days of this order. If they fail to agree, it shall be valued by a valuer appointed by the Registrar on the list of valuers on his panel within seven days of such failure. The costs of the valuation shall be met by the parties in equal shares.
7. The Plaintiff shall have the first option to buy out the Defendant's share within thirty days of this order or such other time as agreed by the parties. If the Plaintiff does not

buy out the Defendant's share, Defendant shall have the option to buy out the Plaintiff's share within thirty days of such failure, or such other time as agreed by the parties.

8. In the event that the parties fail to buy each other out, the motor vehicle shall be sold to best advantage by an Estate agent agreed by the parties or appointed by the Registrar of the High Court where the parties fail to agree.
9. Each party is to bear its own costs.



Mushoriwa Moyo, Plaintiff's Legal Practitioners.
Rufu-Makoni Legal Practitioners, Defendant's Legal Practitioners.