

MWAERA SIGAUKE
versus
MAKE MUDZEDZE

HIGH COURT OF ZIMBABWE
MUZENDA & SIZIBA JJ
MUTARE, 28 May 2025 & 30 May 2025

CIVIL APPEAL

Appellant in person
Mr *J Kamusasa*, for the respondent

SIZIBA J:

1. This judgment relates to two appeals which the appellant filed before this court against the decisions of the Magistrates Court sitting at Mutasa, one being under HCMTC 40/25 (hereinafter called the first matter) and the other being under HCMTF 57/25 (hereinafter called the second matter). Both decisions were in favor of the respondent and the issues arising are related to the extent that the two matters were consolidated for purposes of the hearing and it is also convenient to address both of them in this judgment. After hearing the parties on both matters, we upheld both appeals with no order as to costs and vacated both decisions by the court *a quo*. We substituted the first decision with an order striking off the matter from the roll with costs while on the second matter the substituted order was a dismissal of the application for eviction with costs.

FACTUAL BACKGROUND

2. On 25 July 2023, the respondent sued the appellant at the lower court for the dissolution of their unregistered customary law union and sharing of property. This was in relation to the first matter. The respondent alleged in his particulars of claim that the parties had been married in 1998 and that in 2019, the appellant had started to be violent and she was also denying him his conjugal rights. He alleged that the marriage between the parties had broken down and that he had divorced the appellant in 2022 by

- giving her a customary divorce token (*gupuro*) in the sum of 100 bond. No recognised cause of action or legal basis was alleged for the sharing of property.
3. What appears from the record of proceedings in the first matter is that the trial magistrate was entangled to resolve the issue of whether or not the marriage has irretrievably broken down. After holding that the marriage between the parties had irretrievably broken down, the court *a quo* then went on to distribute the assets of the parties. The respondent was awarded the 6 roomed house in the rural homestead whilst the appellant was awarded US\$1000 as her share of the developments in the rural homestead. She was also awarded half of the banana plants. The movables were also shared accordingly.
 4. The second matter relates to eviction proceedings wherein the respondent now sought to enforce his rights in the rural homestead by evicting the appellant thereon and he was successful in this regard at the lower court. The appeals before this court attack the legal basis of the first judgment upon which the second matter is anchored. The grounds of appeal in the first matter are framed as follows:
 - “1. *The court a quo erred at law and in fact by imposing customary law as the choice of law in the sharing of the property whilst ignoring the case laws and current laws that regulate sharing of property.*
 2. *The court a quo erred at law and in fact by awarding compensation of US\$1000.00 for the developments and contributions made at Mudzedze Homestead without evaluating the value of the developments and the value of the contributions made at the homestead by the Defendant.*
 3. *The court a quo erred at law and in fact by ordering compensation in the sum of US\$1000 where such order was not executable and or where compliance of the order was left to the discretion of the Plaintiff who was expected to comply with that order.*
 4. *The court a quo erred at law by determining the matter when there was no cause action.”*

5. At the hearing of the appeals, the appellant, who appeared on her own after her lawyers had renounced agency, seemed lost as to the very issues that were relevant for determination. On the other hand, Mr *Kamusasa* for the respondent tried in vain to convince us that there was any valid cause of action for the distribution of the assets before the court *a quo* nor any legal basis for the eviction of the appellant in the second matter.

THE LAW AND ITS APPLICATION

6. The present matter can simply be resolved on the basis of the appellant's fourth ground of appeal which alleges that the court *a quo* determined a matter where there was no cause of action. This court has on several matters called upon magistrates and legal practitioners to exercise extreme caution when faced with parties who wish to share assets when unregistered customary unions turn sour. It has been said time and again that the common snares on this aspect of the law include the choice of law, the proper cause of action, jurisdiction (both in terms of the subject matter and the financial threshold) among other legal complexities. The first step that one must warn himself or herself about is the fact that these unregistered customary marriages are not recognized at law as valid marriages save for specific defined purposes such as inheritance at customary law, claims for adultery damages at customary law by husbands of such wives, claims for loss of support by widows or surviving spouses et cetera. See *Jeke v Zembe* HH 237/18. These unregistered marriages will also not affect the rights as to the status, guardianship, custody of such children in terms of section 17 (3) of the Marriages Act [Chapter 5:17]. The Matrimonial Causes Act [Chapter 5:13] does not apply to these marriages and hence one cannot begin to talk of irretrievable breakdown of such a marriage. See *Jeke v Zembe (supra)*, *Kazuva v Dube* HB 119/10. Sections 7 to 11 of the Matrimonial Causes Act [Chapter 5:13] are now applicable to the new set up under civil partnerships in terms of s 41 of the Marriages Act [Chapter 5:17].
7. Where one seeks sharing of property under these unregistered unions, the pleadings must properly reflect the type of set up, association or partnership that one is alleging

to have existed between the parties, that such a relationship has been terminated, the choice of law, the basis for such a claim or cause of action such as joint ownership, unjust enrichment, civil partnership, tacit universal partnership et cetera. See *Jeke v Zembe (supra)*.

8. *In casu*, no cause of action was pleaded in the first matter and hence it cannot be explained how and why the court *a quo* decided to assume its jurisdiction and deal with the sharing of the assets of the parties. To begin with, the trial magistrate was not alive to the fact that there was no valid marriage which could be said to have irretrievably broken down. Having gone astray in the first matter and distributed the assets of the spouses, the court continued to rely on such erroneous judgment to grant an eviction order against the appellant in relation to the second matter. It is on the basis of these considerations that we allowed the two appeals and vacated both judgments by the court *a quo* as highlighted above.

Muzenda J concurring

Lunga Mazikana Attorneys, respondent's legal practitioners