

NKULULEKO HADEBE

Versus

SIBUSISIWE HADEBE [Nee MPALA]

IN THE HIGH COURT OF ZIMBABWE
NDLOVU J

BULAWAYO 29 NOV 2023, 27 MAR, 3 MAY, 21 JUNE, 29 JULY, 27 AUG 2024 & 24 FEB
2025.

Divorce Action

Adv. K Phulu, for the Plaintiff.

Adv. P. Dube, for the Defendant

NDLOVU J: This is a divorce action matter. The parties married on 26 August 2017 in terms of the Civil Marriages Act Chapter 5:11 [*now Chapter 5:17*] and the marriage still subsists. The marriage was not blessed with children.

COMMON CAUSE.

Before the trial, the parties agreed that:

- 1]. Their marriage has irretrievably broken down.
- 2]. The court should grant a decree of divorce.

3]. The Plaintiff should be awarded the following property:

- [3.1]. Nissan NP 3000 motor vehicle.
- [3.2]. Refrigerated truck.
- [3.3]. 7 (seven) Head of cattle.
- [3.4]. 3 (three) Mining compressors.

[3.5]. 1 (one) Hammermill.

4). The Defendant should be awarded the following property:

[4.1] Household property.

[4.2] Nissan Hardbody motor vehicle.

[4.3] Toyota Rev motor vehicle.

[4.4] 3 (three) Mining compressors.

[4.5] 1 (one) Hammermill.

CONTESTED.

The following 3 (three) issues were referred to trial:

- 1]. Whether Stand No. 2525 Mahatshula North is matrimonial property?
- 2]. Whether Stand No. 4331 Spitz Kop Gwanda is matrimonial property?
- 3]. What is the best manner of distributing the immovable matrimonial property?

THE TRIAL.

Before the trial commenced and after I had gone through the file, I called counsel to chambers and indicated to them that, from the pleadings, it was my view that a trial was unnecessary in this matter. They understood the court's drift. I implored them to engage and take further instructions from their clients to speedily and less costly dispose of this matter, for the parties to move on with their lives. The efforts by counsel were unsuccessful. The power of instruction had prevailed and that resulted in a long trial.

Among other things, the trial revealed that the Plaintiff came into this marriage as a divorcee. He came with the Gwanda house [*the Gwanda property*]. That property was improved by the parties through their joint efforts. It is made up of 7 [seven] rooms and has a cottage with 2 [two] rooms. Before the marriage, Defendant had acquired a residential stand in Mahatshula [*the Mahatshula property*]. A house was later constructed on that property. This property has 8 [eight]

rooms and a cottage with 2 [two] rooms. The Plaintiff played the boyfriend and later husband role during the construction of the house.

When the parties fell in love the Plaintiff was having labor-related issues with his erstwhile employer. He had 2 [two] kombis. They were later repaired and disposed of. The defendant was employed and at the same time was hiring out mining equipment and this side hustle brought her reasonable returns. The parties grew that business together profitably to the extent that the money used by Plaintiff to pay Lobola for Defendant came from it and their wedding was sponsored by that side hustle to the tune of plus/minus US\$ 30,000.00. It admits to no argument that at the time of the commencement of the parties' relationship, Defendant was financially stronger than Plaintiff. It equally admits to no argument that the arrival of Plaintiff in Defendant's life enhanced the fortunes of Defendant's side hustle. He had the time in his hands and used it to oversee the family's business operations. He put in a considerable shift that positively impacted their financial fortunes. The family's financial profile and stability trajected upwards during the parties' marriage. Discerning from the evidence of both parties, it is clear that during the subsistence of their marriage, the parties worked towards a communal estate and that appears to have informed their agreed way of sharing their movable property.

PLAINTIFF

The Summons claimed 50% of the Mahatshula property. He had excluded mentioning the Gwanda property in the Summons. At the end of his testimony, he indicated that even if 40% of the Mahatshula property value is awarded to him that would be just. The Plaintiff's position is that he worked as a husband and partner and was never an errands boy for the Defendant. His contribution was financial, physical and emotional. They struggled and budgeted together. It was never about him or her. He argues that he is entitled to a share of the house.

DEFENDANT

Defendant testified that Plaintiff was fully involved in the construction of the Mahatshula property as he did all the necessary errands but was not financially involved. It is her position that she has overcompensated the Plaintiff. He will remain with a modernized homestead and an improved Gwanda property and Plaintiff can still work.

THE LAW

It is worth noting that *section 7* of our *Matrimonial Causes Act, Chapter 5:13*, does not refer to **matrimonial** property but to **spousal** property when it comes to divorce. That is understandable because the regime of our marriages is “*out of community of property*.” Legal practitioners and marriage officers should take note of this. A litigant has to be made to understand that the manner of acquisition is not the primary factor in the distribution of the assets of a couple upon divorce. The primary consideration is whether or not the property is owned by one of the parties and/or jointly by the parties. Once this reality is explained to and understood by the divorcing individuals, issues will be curtailed, trials shortened and/or their numbers reduced. More time will be liberated for other matters.

The Court is statutorily bound to exercise considerable discretion when it apportions the property of the parties upon divorce. This is not a mathematical or emotional exercise. Several factors come into play. Among those several factors is the contribution by either spouse directly or indirectly towards the acquisition and maintenance of the estate as a whole in general. The court aims to try as much as possible to achieve a just and equitable distribution of the property. That exercise may involve taking from one spouse and giving the other, regardless of the acquisition or contribution towards the acquisition of the property in question.

Section 7 of the Matrimonial Cause Act [Chapter 5:13]

DECISION

The properties under consideration in this matter are spousal property within the meaning of the law. They are available for distribution between the parties per the dictates of the law.

Having heard and seen the parties testify and considered the evidence placed before me I entertain no doubt at all in my mind that on a balance of probabilities, the Defendant’s evidence on factual issues is more probable than that of the Plaintiff. There is evidence of indirect contribution by the Plaintiff towards the construction of the Mahatshula Property. The law obliges the Courts not to disregard indirect contributions by a spouse. It however does not follow that where one has made a financial or other form of contribution towards the acquisition or maintenance of a spousal property they must automatically get a share of it upon divorce. That can only be done if it is just

and equitable to do so. In this case, the two houses are almost the same. There are only two houses to distribute. It is not like one of the individuals will remain homeless. In as much as the parties worked towards a communal estate, Defendant was financially stronger than Plaintiff. The Plaintiff is remaining with the homestead as well.

DISPOSITION.

On the backdrop of how the parties have agreed to share the movable property, and their contributions towards the properties in question, I find it equitable, just and per the law that each party retains the immovable property registered in his or her name as his or her sole and exclusive property. I accordingly order as follows.

ORDER

1. A Decree of Divorce be and is hereby granted.

2. The Plaintiff should be awarded the following property:

[2.1]. Nissan NP 3000.

[2.2]. Refrigerated truck.

[2.3]. 7 (seven) Head of cattle.

[2.4]. 3 (three) Mining compressors.

[2.5]. 1 (one) Hammermill.

3. Stand No. 4331 Spitz Kop Gwanda

4. The Defendant should be awarded the following property:

[4.1] Household property.

[4.2] Nissan Hardbody.

[4.3] Toyota Rev.

[4.4] 3 (three) Mining compressors.

[4.5] 1 (one) Hammermill.

5. *Stand No. 2525 Mahatshula North, Bulawayo.*

6. *Each party is to bear its costs of suit.*

NDLOVU J.

Ncube-Tshabalala Attorneys, Plaintiff's Legal Practitioners.
Coghlan And Welsh, Defendant's Legal Practitioners.