

LETWIN KADIYO
versus
KUDAKWASHE NAISON

HIGH COURT OF ZIMBABWE
TSANGA J
HARARE; 25 & 30 October & 6 November 2024, & 14 January 2025

Civil Trial

L Maeresera & T Bure, for plaintiff
M Hondonga, for defendant

TSANGA J:

The plaintiff in this matter, Letwin Kadiyo, lays monetary claims against the defendant for US\$32 500.00 and US\$20 000.00 based on a tacit universal partnership that she says she had with Kudakwashe Naison, the defendant. The plaintiff met the defendant in 2013 at a time when each used to sell his or her own wares at a market called Gulf Market in Harare's central business district. She sold shoes and he sold cell phones. They fell in love. They started cohabiting in 2014 with his parents. He continued with his business and she did the same with hers. Each at the time would keep their profits.

She gave birth in May 2015 to their first child and it was at that time that she says she stopped working. The defendant had then suggested that they go into a joint venture selling phones. She said that was the business he was good at. Her testimony was that she had given him US\$500.00 as her contribution to the joint endeavour. He had ordered other phones and had acquired another sales table on the first floor of Gulf market. An employee had been found who worked from the ground floor table whilst the defendant took care of the upstairs table. The defendant would travel to Mutare and at times when he was away she was the one who would be at the sales shop with the child. In essence, she would go there occasionally as she was additionally saddled with the responsibility of looking after a young child. In 2017, they had moved to a flat in town. They were also given a loan in the form of cell phones worth US\$35 000.00 by a Chinese woman called Anita who was the defendant's contact in China. The defendant would also occasionally go to China and when he was away, she would go to

the shop daily. Her testimony was that the debt from Anita was paid within a month. At that time their average sales would be as high as US\$7000.00 a day and profit was in the region of US\$3000.00 to US\$3 500.00. They bought a stand in Haydon Park using profits from the phone sales. It was in both their names. This was in July 2019. By then, they had two children. They now have three. They started constructing a sixteen roomed house on the stand. When they had constructed up to roof level, they agreed to sell it so that they could buy a stand with title deeds. She said she agreed because the developer of the stand they had bought had indeed once been arrested. They found a buyer in 2022 and the property was sold for US\$65 000.00. She was not given anything. Instead, in March 2023 when they separated, the defendant had soon thereafter bought himself a car and another which she said he uses as a taxi. It is against this background that she claims US\$32 500.00 in the initial instance from the sale of the stand.

She also testified that at the time of their separation in 2023 they had cell phone stock worth US\$40 000.00. As such she claims US\$20 000.00 as her half share of that stock. No evidence, however, was placed before the court to support the claim that there was stock worth US\$40 000.00 at the time of separation. She stated that the evidence was on a computer which the defendant had taken with him when he left. To her knowledge, he had since started operating two other tables at the Gulf market. He had also assisted her with starting a business selling hair weave on extensions by buying her stock for US\$1 400.00.

In cross-examination she stated that she had not reordered stock as she had used her profits towards looking after the children. She also agreed that when they separated the defendant had left with his clothes only and that she had retained a Honda fit car and all household goods and effects.

In his evidence, the defendant denied that they had a business partnership. He denied that she had ever given him US\$500.00 to order more stock. The plaintiff knew of his business as a wife but that this did make her a business partner. Indeed, they had bought a stand, which had been put in both their names. His explanation was that they had had to sell the stand they had acquired because his business was down. As for the proceeds from its sale, his testimony was that he had in fact used the proceeds to service a loan obtained from Anita as the loan was of a revolving nature. When he paid, he would get another. It was the latest revolving cycle, which he repaid on 21 April 2024 with 5% interest. He produced a print out of what he said he had repaid. He had used the balance to pay rentals and to look after the family since income was still low because of the covid pandemic. He agreed that he had bought a car in July 2023,

four months after they parted and rationalised that he had left her with the family car since she was staying with the children. He denied owning another car that he runs as a taxi.

In cross-examination, it was put to him that his proof of payment document to Anita was fabricated, as there was no evidence of any other payments made from 2019 to 2022 of the revolving loan. A total of US\$47 000.00 had been paid in 2024.

His explanation to the court for having no other direct evidence of payment of the revolving loan was that he would use people going to China personally with some of the money. He acknowledged that he had not paid the plaintiff anything from the sale of the stand. He estimated the stock at the time of their separation as approximately US\$5 000.00 as opposed to US\$40 000.00 stated by the plaintiff.

Legal and Factual Analysis

The requirements of a business partnership as laid out in *Mtuda v Ndudzo* 2000 (1) ZLR 710 (H) at p 716 F to G are as follows:

- (a) “Each of the partners must bring something into the partnership or must bind himself or herself to bring something into it, whether it be money or labour or skill;
- (b) The business to be carried out should be for the joint benefit of the parties;
- (c) The object of the business should be to make a profit; and
- (d) The agreement should be a legitimate one.”

The parties must also be in agreement as to the formation of the partnership.

She who alleges must prove. In this instance, the defendant denied that he ever went into partnership with the plaintiff. There was no evidence placed before the court to corroborate a business partnership. He was already in the business of selling phones. She was in the business of selling shoes. She stopped her own shoe selling business. She may have helped him out with US\$500.00 and assisted when he was away in the context of customary marriage but not in the sense of a business partnership in which she owned half of the on-going business. There was no evidence to show that the business held stock of US\$ 40 000.00. If indeed they had been in partnership she would have had some tangible evidence to place before the court other than bare assertions.

It is, however, a common cause fact that they were husband and wife customarily. This was in reality the partnership that they had. It is also not in dispute that the property they owned was in both their names and that it was sold for US\$65 000.00. In *Chapeyama v Chapeyama* 2000 (2) ZLR 175 (SC) it was held that that the registration of a property in the names of husband and wife confers real rights in the property. It is not just a device to confound creditors. Each party has a real right to an undivided half share of the property.

In my view even if the court accepts that they were not in a business partnership, he cannot escape this obvious reality that she owned half of what they considered to be the marital home. By registering the property in both names she obtained a half share. Also, since there was no business partnership in the strict sense of that word relating to his cell phone business, then the loan to Anita had nothing to do with the plaintiff. He could not have used her half share of the proceeds from the sale of the property in which he owned half of it, to cover his own business loan. He owes her US\$32 500.00.

In the result, it is ordered as follows:

1. The defendant shall pay the plaintiff the sum of US\$32 500.00 being her half share of the proceeds from the sale of the jointly owned property being Stand 3239 State Land, Haydon Farm, measuring 877 square metres.
2. The sum of US\$32 500.00 shall be paid over a period of six months or such period as the parties may agree between themselves in writing.
3. Each party shall pay its own costs.

TSANGA J:

Chizengera Maeresera & Partners, plaintiff's legal practitioners
Mangachena Attorneys, defendant's legal practitioners