

JANET MANYORA
versus
YAMURAI MUTATA

HIGH COURT OF ZIMBABWE
MAXWELL J
HARARE, 6 May, 8 & 10 June, 21 October 2022 & 5 July 2023

Civil Trial – Divorce

N T Tsarwe, for the plaintiff
K Shamu, for the defendant

MAXWELL J: The plaintiff and the defendant contracted a Customary Law Marriage sometime in 1987. On the 15th of May 1990, they solemnized their marriage in terms of the then African Marriages Act [*Chapter 238*]. No children were born out of the marriage relationship. On the 17th of September 2021, plaintiff issued out summons seeking an order for a decree of divorce, distribution of the assets of the spouses and costs of suit. In her declaration, plaintiff alleged that the marriage relationship between the parties has irretrievably broken down to such an extent that there are no reasonable prospects of restoration of a normal marriage relationship and that the parties had not stayed together as husband and wife for a period of twenty-seven (27) years. She proposed the distribution of the assets of the spouses with her getting Stand Number 11004 at Kugarika Kushinga Housing Cooperative in New Mabvuku (the New Mabvuku Stand), a bed, gas tank, television set, fridge and sofas. She proposed that Defendant be awarded the rural homestead at Marewa Village, Mayema area of Uzumba Maramba Pfungwe District, a wardrobe and a kitchen unit.

Defendant entered his Notice of Appearance to Defend and in his plea pointed out that Plaintiff left the matrimonial home in January 2021 at his behest as she required medical assistance. He stated that apart from the assets listed by the plaintiff there was another immovable property which was purchased by the parties during the subsistence of the marriage, being Stand Number 25685 Eastview Gazebo, Harare (the Eastview Stand) which plaintiff fraudulently registered in her

biological son's name. He proposed that as the plaintiff had already benefited from the Eastview Stand, the New Mabvuku Stand should be awarded to him. He submitted that the rural homestead cannot be distributed as it is a family home that was owned by his late father. He pointed out that the Plaintiff did not make any significant contribution or improvement to the rural homestead. He prayed for the dismissal of the Plaintiff's claim with costs on an attorney and client scale.

In her replication, plaintiff stated that defendant deserted her and left her in rented accommodation in 1992 only to come back in May 2019. She stated that when she left the rural home in 2021, the defendant was in the process of bringing another woman to the rural home to be his wife and the marriage relationship between the parties had already irretrievably broken down. She submitted that the Eastview Stand is no longer available for distribution as part of the assets of the spouses. She stated that there was no justification for defendant to be awarded the New Mabvuku Stand or any share of it as he did not contribute anything towards its acquisition and the house built thereon was allocated to her alone at a time she did not know where defendant was living. She further stated that defendant only surfaced between 2005 and 2006 after some of his clothes were stolen by a tenant and the case was being investigated by the police. She pointed out that for some time defendant was based in Botswana and she was meeting all the obligations alone, and that defendant only resurfaced at the New Mabvuku Stand in May 2019. The parties stayed together up to June 2020 when they went to the rural home which she left in January 2021. She also stated that she acquired Stand Number 25685 Eastview as her sole property without any direct or indirect contribution from defendant. She pointed out that defendant had deserted her in 1992 and at the time she acquired this Stand between 2002 and 2003, she did not know where defendant was staying. Further that she disposed of the property in 2014 during the time defendant's whereabouts were unknown. She further pointed out that she made significant contributions towards the construction of a 4-roomed house, pit latrine toilet and a grass thatched kitchen at the rural home, including sinking a borehole. Plaintiff persisted with her claim.

JOINT PRE-TRIAL CONFERENCE

As neither of the parties was prepared to accept the other's proposal, a pre-trial conference was held. The joint pre-trial conference minute reflects that the parties agreed that the following are the issues for trial: -

- a) Whether or not Stand Number 11004 Kugarika Kushinga Housing Cooperative was solely acquired by Plaintiff alone without any contribution from Defendant who had deserted Plaintiff for 27 years and if so, what is the just and equitable distribution thereof?
- b) Whether or not Stand Number 25685 Eastview Phase 1, Harare, is part of the assets of the spouses, if so, what is the just and equitable distribution thereof?
- c) Whether or not the rural homestead at Marewa Village, Mayema area of Uzumba Maramba Pfungwe District is part of the assets of the spouses, if so, what is the just and equitable distribution thereof?

TRIAL

Three witnesses gave evidence for the plaintiff. The first to testify was the plaintiff herself. She stated that she customarily married the defendant in 1987. At the time defendant was employed at Red Lantern Bar and she was a housemaid. In June 1988 Defendant left employment. On 31 August 1988 they joined Kugarika Kushinga Housing Cooperative after defendant heard of it whilst looking for work as he was no longer employed. The parties were staying at plaintiff's workplace. Defendant failed the Cooperative interview but she was successful. However it was Defendant's name that was recorded as the secretary of the Cooperative said it was not possible to register both parties. This was despite the fact that she was the one paying the joining fee. She continued paying the subscriptions. She produced receipts obtained after paying the subscriptions as exhibit 2. On 15 May 1990, the parties registered their marriage at the Rusape Community Court. The marriage certificate entry number 100 of 1990 was produced as exhibit 1. Plaintiff continued taking care of the defendant and meeting all financial obligations until he found a job in 1992. Thereafter defendant started staying with another woman by the name Doroth. Plaintiff sent \$1000.00 to defendant's parents for brick moulding for the construction of a bedroom at his parents' home in Murehwa, as the parties did not have a place to sleep at the rural home. Ten thousand bricks were moulded. Defendant's parents took the bricks and built a 4-roomed house and a toilet. The remaining bricks were used to build around the well. Plaintiff contributed six bags

of cement, two doors and locks. In 1995 Defendant separated from Dorothy and came to plaintiff's workplace. They stayed together for 4 months after which in 1996 defendant left for another woman, Joyce. On 31 August, 1999, plaintiff was allocated stand number 11004 by the Cooperative. She put a caretaker at the house who unfortunately stole from the parties in 2005. Plaintiff notified Defendant's younger brother about the theft and Defendant subsequently came to compile a list of his stolen property which was required by the police. He went back to wherever he was staying after the police report. In 2009 Defendant came to her workplace and advised her that he was leaving for Botswana. She gave him bus fare and he left. He came back in 2014 after he had been involved in an accident and she took care of him. After three weeks he went back to Botswana at Plaintiff's expense. In 2015 Plaintiff had some health challenges and left employment. She continued paying instalments until in 2019 when there were problems at the Cooperative and the offices were closed. Defendant came back in May 2019 and they started staying together. She was now earning a living from a market stall at Mbare. In June 2020 the parties were requested to go and take care of the rural home. They went and advised the village head that they had come to stay. In December 2020 defendant said he was going to Plumtree to collect medication. He was away for a week and came back in January 2021. Plaintiff was later advised by defendant's brother that defendant had left a family in Plumtree. On 14 January 2021 defendant asked Plaintiff to go to Harare. She was later advised that defendant's wife and son from Plumtree would be coming. Initially she refused to go to Harare. She was advised to pack all her belongings and leave. She came back to stay at the New Mabvuku Stand.

Plaintiff produced receipts that were issued when subscriptions to the Cooperative were paid. The receipts were marked exhibit 3. The majority of the receipts are in the defendant's name. Plaintiff's evidence was that she was the one solely paying the subscriptions and the receipting persons would issue the receipt in the name on the membership card which is the defendant's. She disputed that defendant paid the subscriptions resulting in receipts being issued in his name. She stated that even on the occasions where defendant would go to make the payments in person, she would have given him the money. She stated that as she was employed, she would send different people to deposit the subscriptions for her.

Plaintiff also testified that in 2003, in defendant's absence she joined the Mabvuku-Tafara Housing Cooperative. She was allocated stand number 25685 Eastview Phase 2. She advised her son, Ernest

K. Mutongi, about the stands and he sent her money so that she buys a stand for him. Her son was in South Africa then. A stand in Phase 4 was allocated to her son. When she had financial challenges in 2014, she decided to sell her stand. On advising her son, he suggested that she sells the stand in Phase 4 and then her son would get the one in Phase 2. She advised the chairperson of the cooperative of the arrangement. On the 20th of May 2014 she deposed to an affidavit explaining the disposal of the Phase 4 stand and the surrender of the Phase 2 stand to Ernest Mutongi. The affidavit was produced as exhibit 4. According to her Defendant contributed nothing to the acquisition of this property and did not visit the property until after the summons were issued. She produced the receipts obtained after paying subscriptions to Mabvuku-Tafara Housing Cooperative on behalf of her son as well as those obtained after purchase of building materials for her son as exhibit 5. Plaintiff testified that Defendant was not contributing even towards the upkeep of the family. According to her, he was busy spending money with his women. Plaintiff gave her evidence well and was not shaken under cross-examination.

The second witness to testify was Putseni Gwishiri (Gwishiri), a vendor and hairdresser who stayed 4 houses away from the New Mabvuku Stand. Her evidence was that she was close to the Plaintiff's sister. She started staying in the area in 2005. Plaintiff was at work and her sister was the one staying at the New Mabvuku Stand. Later there was a small boy by the name Tiisayi whom she was told was defendant's son. She was advised that the resources being used at the New Mabvuku Stand came from plaintiff. She only met Defendant in 2014 when he came from Botswana with an injured leg. He stayed for three days and proceeded to where plaintiff was working. She next saw him in 2019 and by that time plaintiff was no longer employed. Defendant went to stay at the rural home. Under cross examination she stated that she was not aware that there was a dispute concerning the New Mabvuku Stand. She did not know how the stand was acquired and was only told that Plaintiff was the one contributing to the subscriptions that would be paid by her sister. Her evidence was mainly what she observed at Plaintiff's residence and what she was told by plaintiff's sister.

The third witness was Charles Mupenda (Mupenda), a member of the cooperative whose house is about 500 metres from the New Mabvuku Stand. He started living in his house in 2014. He was the secretary of the cooperative for the period 2007 to 2015. His evidence was that he has known plaintiff for about 20 years but only came to know defendant when he came to court to

testify in this matter. He confirmed that the Cooperative would not register husband and wife as members but would only register one person. The subscriptions would be paid by anyone in the name or account of the registered member. He had heard that between 2007 and 2008 or prior to that Plaintiff had approached the cooperative administration indicating that she had problems with her husband and wanted the registration changed to her name. However as the husband was not located, her request was not granted. His evidence mainly clarified issues to do with the cooperative and what was expected from its members.

That was the Plaintiff's case.

The defendant was the sole witness in his case. His evidence was that he fell in love with Plaintiff in 1987 and paid lobola for her in Rusape. At that time he was working at Red Lantern Bar close to Tenda Buses in Masasa. In 1990 they registered their marriage and in 1998 they got the New Mabvuku Stand. After Red Lantern Bar, he worked part time at Harare Sports Club and Sables Hotel. Plaintiff did not conceive and after 15 years he fell in love with Tiiseyi's mother. He is the one who acquired the New Mabvuku Stand after being advised by Plaintiff's sister's boyfriend about the stands. He was the one making payments but did not keep receipts as he would surrender the deposit slips to Plaintiff's sister. He worked in Botswana from 2005 to 2019 and would send groceries and cash using buses. At the end of the year he would come home. Whenever he came back he would pay the subscriptions, at times he would pay for more than one month. He stated that when the New Mabvuku Stand was allocated to them, there was a house with no electricity. He had electricity connected without the involvement of the Plaintiff. In his view the property is jointly owned and should not be awarded to one person.

Defendant stated that the rural home belonged to his late parents and should not be shared. He said the improvements at the rural home were at the expense of Godwin Mutata, his brother's son. The Eastview Stand should be shared equally as it was acquired during the subsistence of the marriage. He stated that the parties helped each other to build at the Eastview Stand and put lodgers.

THE LAW

It is trite that section 7 of the Matrimonial Causes Act [*Chapter 5:13*] guides the court in considering the distribution of the assets of the spouses during divorce action. The section provides as follows; -

“7 Division of assets and maintenance orders

(1) Subject to this section, in granting a decree of divorce, judicial separation or nullity of marriage, or at any time thereafter, an appropriate court may make an order with regard to—

(a) the division, apportionment or distribution of the assets of the spouses, including an order that any asset be transferred from one spouse to the other;

(b) the payment of maintenance, whether by way of a lump sum or by way of periodical payments, in favour of one or other of the spouses or of any child of the marriage.

(2) An order made in terms of subsection (1) may contain such consequential and supplementary provisions as the appropriate court thinks necessary or expedient for the purpose of giving effect to the order or for the purpose of securing that the order operates fairly as between the spouses and may in particular, but without prejudice to the generality of this subsection—

(a) order any person who holds any property which forms part of the property of one or other of the spouses to make such payment or transfer of such property as may be specified in the order;

(b) confer on any trustees of any property which is the subject of the order such powers as appear to the appropriate court to be necessary or expedient.

(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.

(4) In making an order in terms of subsection (1) an appropriate court shall have regard to all the circumstances of the case, including the following—

(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 condition of each spouse and child;

(e) the direct or indirect contribution made by each spouse to the family, including contributions made by looking after the home and caring for 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;

and in so doing the court shall endeavour as far as is reasonable and practicable and, having regard to their conduct, is just to do so, to place the spouses and children in the position they would have been in had a normal marriage relationship continued between the spouses.

(5) In granting a decree of divorce, judicial separation or nullity of marriage an appropriate court may, in accordance with a written agreement between the parties, make an order with regard to the matters referred to in paragraphs (a) and (b) of subsection (1).”

CLOSING SUBMISSIONS BY THE PARTIES

After the trial, the parties filed closing submissions. Plaintiff referred to *Ncube v Ncube* 1993 (1) ZLR 39 and submitted that the conduct of the defendant during the course of the parties’ marriage was both obvious and gross and that defendant does not deserve to be awarded a share from the New Mabvuku Stand. According to her, to award defendant any share in that property is tantamount to enabling him to acquire a morally indefensible financial gain from a property in respect of which he never contributed money or money’s worth. Plaintiff further referred to *Sithole v Sithole* HH 674/14 and *Chiparaushe (nee Chimfwembe) v Chiparaushe and Another* HH 312/17 and argued that she lawfully disposed of the Eastview Stand which was registered as her sole property in 2014 before she even contemplated instituting the present divorce proceedings.

Defendant referred to the case of *Gonye v Gonye* 2009 (1) ZLR 232 and argued that both properties were acquired by the parties during the subsistence of the marriage and that he is entitled to a share in each of them. He referred to *Takafuma v Takafuma* 1994 (2) ZLR 103 and argued that even though the Eastview Stand is in the name of Plaintiff’s son, he made indirect contribution and therefore the property forms part of their matrimonial property. He argued that on the strength of *Mhora v Mhora* SC 89/20 and *Usayi v Usayi* 2003 (1) ZLR 684, he is entitled to a share of the Eastview property on the basis of his indirect contribution.

ANALYSIS

The evidence given will be analysed in light of the issues referred to trial.

- (1) Whether or not Stand Number 11004 Kugarika Kushinga Housing Cooperative was solely acquired by Plaintiff alone without any contribution from Defendant who had deserted Plaintiff for 27 years and if so, what is the just and equitable distribution thereof?**

KORSAH JA (as he then was) in *Ncube v Ncube* 1993 (1) ZLR 39 stated that

“.. the provision by s 7(3)(d) that, in the distribution of the assets of the spouses, regard must be had to the direct and indirect contribution made by each spouse to the family, seems to me to suggest that it is only in very exceptional circumstances that a spouse may benefit from assets to which he or she has not contributed money or money’s worth

I am in agreement with the learned trial judge that the rationale for taking into consideration the matters specified under s 7(3) of the Act is to empower the courts to prevent a spouse from acquiring a morally indefensible financial advantage from the failed marriage. To achieve this, the court must take an overall view of how justice can best be achieved between the parties.”

The Act referred to in the above quotation was the Matrimonial Causes Act 1985. The parties are agreed that at the initial stage, they approached Kugarika Kushinga Housing Cooperative together and defendant was registered as the member of the cooperative. Plaintiff’s issue is that she paid for the stand without any contribution from the defendant. Her evidence was to the effect that defendant spent most of the time away from home pursuing other women who could bear him children as she unfortunately failed to conceive. She outlined in detail the times defendant would be around and when he would be away. In summary, she stated that they married customarily in 1987. In 1988 defendant left employment and she was taking care of him until 1992 when he got employed at Creamy Inn. On getting a job he moved out of the matrimonial home and started co-habiting with one Dorothy until 1995. On separating with Dorothy he came home to the forgiving Plaintiff and stayed for four months. In 1996 he left to co-habit with Joyce Mukwena. He left Joyce and moved in with Onwai Chimbende in 2005. From Onwai to Elizabeth. In 2009 he brought his clothes and indicated that he was leaving for Botswana. In 2014 he came back after having had an accident. After 3 weeks he said he was going back to Botswana. In 2019 he came back as he was no longer able to ride a bicycle which was the mode of transport for the work he was doing, ie, selling ice cream. In June 2020 they went to defendant’s rural home where they stayed until December 2020. Defendant left for Plumtree and came back on 6 January 2021. On 14 January 2021 she was asked to make room for Elizabeth and her son and she left the rural home to stay at the New Mabvuku Stand.

Plaintiff repeatedly stated that defendant did not contribute to the subscriptions required to secure the stand. She pointed out that when she asked for his contribution, he would say he was taking care of the family and sending children to school. This must have been heart breaking to

the plaintiff who had no child with the defendant. She outlined the numerous times she took care of the defendant and also his children sired with other women.

Defendant claims a share in this property for various reasons. The first is that he is the one who advised the plaintiff on the availability of the stand. In my view that on its own is not sufficient to secure a share in the property. Were it so, all advertising estate agents would hold shares in all the properties they sell.

The second reason is that he claims to have made a significantly higher contribution as he would give the Plaintiff money to pay the monthly subscriptions to the Cooperative as he was working outside the country, in Botswana. Considering the evidence of the monetary contributions of the parties to the cooperative, the first amount paid was the joining fee. Plaintiff's testimony was that they were advised that the joining fee was \$302.00 and she is the one who paid it. On being asked why defendant did not pay it, her response was that he was unemployed, having left employment in June 1988. That evidence was in her summary of evidence and she repeated it orally. She was not challenged under cross-examination. All that was suggested to her was that defendant was gainfully employed throughout the subsistence of the marriage and paid subscriptions. It is trite that what is not specifically challenged or controverted is deemed admitted and require no further proof.

The next issue is the payment of the subscriptions. Defendant sought to rely on the fact that the receipts produced in court are in his name. The explanation by the plaintiff was that the cooperative required subscriptions to be paid in the name of the registered member. This evidence was confirmed by the 3rd witness for the Plaintiff who was the secretary of the cooperative at one time. The receipts in defendant's name therefore did not mean that the payments were made by him. Plaintiff's evidence was that she paid the joining fee and continued paying the subscriptions. Defendant had left employment in June 1988. They joined the cooperative on 31 August 1988. She indicated that she was taking care of defendant until he found a job at Creamy Inn in 1992. Again that evidence was in plaintiff's summary of evidence. It was suggested to her in cross-examination that defendant was laid off for three months and obtained terminal benefits which went towards payment of subscriptions. Plaintiff disputed this and the line of questioning was not pursued. The payment of terminal benefits was not part of defendant's summary of evidence. The

amount of the terminal benefits was not disclosed. Most probably the terminal benefits issue was an afterthought meant to justify defendant's insistence on having made contributions.

Plaintiff further indicated that upon getting a job, defendant deserted her and lived with several women on different occasions. In her oral evidence she gave the names of the women and the years within which defendant lived with each of them. The period stretched from 1992 to 2009. She testified that during that period, defendant would appear and stay briefly in between the women. Defendant did not dispute his promiscuity. He focused his alleged contributions on the period he was in Botswana when he said he would send the money through bus drivers. He did not shed any light on the contributions he might have made prior to going to Botswana. All he said in his summary of evidence was that he made a significantly higher contribution as he would give the plaintiff money to pay the monthly subscriptions. In his evidence-in-chief he said he would make the deposit at the bank and give plaintiff's sister the deposit slip for registering at the cooperative. According to him, he would personally deposit the subscriptions at the bank as his signature would be needed. Despite plaintiff's evidence giving details of each woman he lived with at a particular time, he never suggested contributions specific to any of the periods he moved from one woman to another. Under cross-examination when he was confronted with a deposit slip in the name of Tafadzwa, he pleaded forgetfulness. When reminded that he categorically said only he deposited the money for subscriptions at the bank and that during the time he was in Botswana he would come and make lump sum payments whenever he came home he claimed to have made a mistake. Plaintiff's evidence that defendant went to Botswana in 2009 was not disputed yet when defendant testified, he said that he left for Botswana in 2005. When plaintiff disputed receiving money from bus drivers or an unnamed sister-in-law, the line of questioning was abandoned. No dates on when she allegedly received the money were given. No amounts sent were stated. No names of either the bus companies or bus drivers through whom the money was allegedly sent were disclosed. Plaintiff's statement that when she asked him for money he said he was looking after the family and paying children's fees was not controverted. I find defendant's evidence on this aspect improbable and inconsistent. The reason for the inconsistency can only be because he was not telling the truth. In *Leader Tread Zimbabwe v T.M.Smith* HH 131/03 it is stated that it is trite that if a litigant gives false evidence, his story will be discarded and the same adverse inferences may be drawn as if he had not given evidence at all – see *Tumahole Bereng v R* [1949]

AC 253 and *South African Law of Evidence* by L H Hoffmann and D T Zeffertt (3 ed) at p 472. If a litigant lies about a particular incident, the court may infer that there is something about it which he wishes to hide. *In casu*, I am satisfied that he deliberately lied to mislead the court. He did not contribute money or money's worth to the acquisition of this property.

Defendant also sought to capitalize on the fact that he is the one registered as a member of the cooperative. The registration on its own does not help him in light of the fact that the court is empowered by s 7 of the Matrimonial Causes Act to make an order for the distribution of the assets of the spouses, including an order that any asset be transferred from one spouse to the other. So even where there is registered title, the court can order the transfer of such property to a deserving party. In any event, his name was recorded before the stand was in existence. I agree with submissions for the plaintiff that if she had not diligently paid subscriptions, the stand would not have been allocated to them.

I found inconsistencies in defendant's evidence. In the final result, I find that Stand Number 11004 Kugarika Kushinga Housing Cooperative was solely acquired by Plaintiff alone without any contribution from the defendant. His conduct during the subsistence of the marriage makes it repugnant to anyone's sense of justice to give him a share of the property which would be tantamount to assisting him to acquire a morally indefensible financial advantage from the failed marriage.

(2) Whether or not Stand Number 25685 Eastview Phase 1, Harare, is part of the assets of the spouses, if so, what is the just and equitable distribution thereof?

The phrase "assets of the spouses" was defined in *Ncube v Ncube* (supra) to include all such property as a spouse was possessed of at the time of the distribution, and not only what was acquired by one or the other or both the parties during the subsistence of the marriage, save such assets

"which are proved to the satisfaction of the court to have been acquired by a spouse, whether before or during marriage —

- (a) by way of 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"

See s7(3) of the Act. The Eastview property does not fall within the exceptions stated above. It is common cause that it was acquired during the subsistence of the marriage. However,

from plaintiff's testimony, defendant has no basis for claiming a share in it. She testified that at the time she joined the cooperative through which she was allocated this stand, defendant was staying with another woman, Onwai. Further that her son, Ernest Mutongi sent some money from South Africa and was made to join the cooperative whereafter he was eventually allocated a stand in Eastview Phase 4. She produced a copy of her son's membership card and the receipts for the subscriptions paid in his name. She further testified that after falling on hard times she decided to dispose of her stand and entered into an agreement where she sold her son's stand and surrendered the one in her name to her son. She produced an affidavit confirming the exchange. All this was not controverted. In essence, she sold her stand as she was allowed by the cooperative administration to swop with her son. Plaintiff testified that defendant did not even know the location of this stand and looked for it after summons were served on him. Defendant's evidence was that he heard of this property from plaintiff's sister. The basis of his claim is that it was acquired during the time the parties were still married. Defendant's position is distinguishable from the one in *Ncube v Ncube* (supra) in that he was not gainfully employed at the time the property was acquired. Neither was he contributing to the upkeep of the family at the relevant time. In any event, the property was disposed of in 2014. Summons were issued out on 17 September 2021, and by that date, Stand 23685 was no longer an asset of the spouses. Accordingly, it is not subject to distribution in this matter.

3. Whether or not the rural homestead at Marewa Village, Mayema area of Uzumba Maramba Pfungwe District is part of the assets of the spouses, if so, what is the just and equitable distribution thereof?

Defendant testified that the rural homestead belonged to his late parents and therefore cannot be subject to distribution. Plaintiff's evidence was that during the lifetime of Defendant's parents, the parties would be accommodated there during the early years of marriage and that after their demise, the homestead is now Defendant's. Plaintiff acknowledged that the rural homestead belonged to Defendant's parents. It therefore is in the category of assets acquired by way of inheritance which are excluded from distribution in terms of section 7(3) (a) of the Matrimonial Causes Act [*Chapter 5:123*]. Accordingly, it is not subject to distribution in this matter.

DISPOSITION

1. A decree of divorce be and is hereby granted.
2. Plaintiff be and is hereby awarded
 - (a) 100% share of Stand 11004 Kugarika Kushinga Housing Cooperative, New Mabvuku, Harare.
 - (b) A bed, Gas Tank, Television Set, Fridge and Sofas.
3. Defendant be and is hereby awarded a wardrobe and Kitchen unit.
4. Each party bears its own costs.

Tadiwa and Associates, plaintiff's legal practitioners
C. Nhemwa and Associates, defendant's legal practitioners.