

AUDREY SIBUSISIWE CHATIKOBO (nee MANGEZ)
versus
MICHEAL ANDREW CHATIKOBO

HIGH COURT OF ZIMBABWE
WAMAMBO J
HARARE; 29 March 2023 & 5 June 2024

Family Court – Divorce Action

T W Nyamakura, for the plaintiff
A Chimhofu, for the defendant

WAMAMBO J: This is a divorce action wherein what is to be determined in the trial is couched as follows in the joint pretrial conference minute: -

“The constitution and distribution of matrimonial assets.”

During the trial the following exhibits were produced:

Exhibit A – The parties’ marriage certificate

Exhibit B – Title deed of Lot 2 of Subdivision E of Subdivision B of Quinnington of Borrowdale Estate.

Exhibit C – Agreement of sale signed between both parties and E.J Walkers Investments (Private) Limited for 17 Windsor Avenue Newlands, Harare.

Exhibit D – Agreement of sale signed between defendant and Mass Engineering (Private) Limited for the sale of Stand 452A Salisbury Township also known as Flat 3, Alpha House, 5 Union Avenue, Harare.

Exhibit E – Acknowledgement of debt by Mass Engineering (Private) Limited and Daniel Frank Sutherland to the defendant in the sum of seventy thousand, signed on 26 October 1994.

Exhibit F – Option to plaintiff to acquire shares in Radnet (Private) Limited.

I should state from the onset that the parties are agreeable to a decree of divorce being granted. This was clear from the, opening submissions and the parties *viva voce* evidence. The parties have been separated for over five years, and have lost love and affection for each other. I find in the circumstances that a decree of divorce should be granted.

What therefore is common cause is that the dispute is centered upon the property distribution. There are two immovable properties to be considered namely the Quinington property, fully referred to in Exhibit B and the Newlands flat, whose full description appears under Exhibit C. The Alpha House flat whose full description appears under Exhibit D has already been sold and is not subject to distribution. I will refer to the three immovables as above.

There are four motor vehicles to be considered for distribution namely:

- The Mercedes Benz registration number ACI 0930
- The Isuzu truck registration number AAX 3166
- The Toyota Vitz registration number ACV 4526 and;
- The Hyundai Creta registration number AEK 8764

There is also the issue of the furniture at the Quinington property and Newlands flat for distribution.

It is common cause that the parties got married under the Marriage Act [*Chapter 37*] now [*Chapter 5:17*] on 3 September 1994.

Two children were born to the marriage who are now both majors. The children are a son and daughter. The daughter is the younger one and she resides with plaintiff at the Newlands flat.

Plaintiff's testimony was to the following effect: -

The Quinington property was inherited by defendant from his father as a piece of vacant land. The parties built the property together up to its current state and value. Currently it is a four bedroomed house and a cottage worth in the vicinity of US\$350 000 – US\$450 000. The parties' children grew up at this property. Plaintiff is agreeable to the Quinington property being awarded to the defendant. She also agrees that the property holds sentimental value to the defendant.

The Newlands flat is a semi – detached single story garden flat with three bedrooms located at a complex with eleven houses. She placed the value at around US\$180 000.00 to US\$200 000.00. Her evidence was that the parties bought the Newlands flat from a developer. They got mortgage finance for 60% of the value of the flat and the balance was paid off from proceeds of the sale of a stand and some savings. She was of the view that if the Newlands flat was sold and she received 50% of the proceeds she would only afford to buy a stand or a one or two bedroomed flat in the Avenues or in Avondale. She proposed that she should be awarded

the Newlands flat and that she would pay for the transfer fees from the developer herself. She also proposed that she should be awarded the furniture at the Newlands flat while defendant retained the furniture at the Quinnington property.

On the motor vehicles she proposed to retain the Hyundai Creta vehicle that she is currently using while defendant can be awarded the rest of the cars which are already in his possession. She also gave evidence in relation to the shares she holds at Radnet (Pvt) Limited where she is currently employed. She stated that she obtained the shares on condition she was bonded to the said company. If she left the company, she would have to sell the shares. She is not claiming anything from defendant from his business or any accruals. She conceded that defendant sold the Alpha house flat. Plaintiff was the sole witness in her case.

The defendant also testified to the following effect: He wants to be awarded 50% of the Newlands property because this is the property they acquired together as a married couple. He testified about how he acquired the Quinnington Stand after the death of his father in 1992. He sold Alpha house flat. This is the property that is at the center of Exhibits D and E. Defendant testified about how the plaintiff's shares were of considerable value.

Defendant was agreeable with plaintiff's proposal that she should be awarded the Hyundai motor vehicle. He was also agreeable on the proposal that each party should retain the furniture in the homes they currently reside in. In other words that plaintiff retains the furniture at the Newlands flat while he retains the furniture at the Quinnington property. Defendant testified that he solely developed the Quinnington property through proceeds from the sale of Alpha house flat and equity received from Mass Engineering. Defendant was also a sole witness in his case.

I will start off with the distribution of property where the parties are in agreement. The parties agreed that plaintiff retains the furniture at the Newlands flat while defendant retains the furniture at the Quinnington property. The parties agreed that plaintiff should retain the Hyundai Creta motor vehicle while defendant is awarded the rest of the motor vehicles.

That leaves the Quinnington and Newlands flat as the disputed properties. From the start plaintiff was of the view that she should retain the Newlands flat. I note here that the tenor of her evidence was such that besides opting for the Newlands flat she was open minded and even generous to forego any claim towards the Quinnington home and its furniture and opted for one car out of the rest of the cars. I found her, on the whole an honest witness. Not so for the defendant. I formed the firm view that he was rather arrogant and prone to exaggerations. He sought to paint a picture that defendant did not directly contribute towards the Quinnington

property. I do not agree. The evidence established that plaintiff was employed by a reputable company and is still so employed. That she would only contribute towards construction of the cottage is rather improbable. Indeed, defendant offered in his testimony that plaintiff should only be awarded 30 to 40% of the US\$15 000.00 valued cottage.

Defendant also sought the plaintiff's shares in Radnet (Pvt) Limited. In this respect plaintiff testified that up to date she has not received any dividends. Exhibit F speaks to the offer proffered to plaintiff. The main effect of Exhibit F is on allotment of shares and how plaintiff shall be entitled to subscribe to such shares. There are no specific figures attached to the offer. Indeed, Exhibit F is titled as follows: AUDREY CHATIKOBO OPTION TO ACQUIRE SHARES IN RADNET (PRIVATE) LIMITED

The shares referred to are clearly through plaintiff's employment at Radnet. How defendant intends to place himself as a party to shares between plaintiff and her employer is difficult to understand. According to the plaintiff the retirement age at Radnet is 65 years. She is currently 53 years old. As mentioned before were she to retire from the company she would have to sell her shares. I take it that would amount to her losing substantial value on the shares. There is no counterclaim by defendant for the said shares. I am not convinced that the shares fall for distribution in the circumstances.

I am mindful that in distributing the assets of the spouses the court has to consider and apply section 7 of the Matrimonial Causes Act [*Chapter 5:13*]. Section 7 (4) of the Matrimonial Causes Act [*Chapter 5:13*] reads as follows:

- “(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 endeavor 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.”

In reaching a decision I will consider the above considerations. I however, also note and place under consideration what GILLESPIE J said in *Shenje v Shenje* 200 (1) ZLR 160 (H) at 163E – 164A. The Honourable Judge noted that the circumstances reflected in section 7(4) of the Matrimonial Causes Act [*Chapter 5:13*] are not only exhaustive but that a court ought to exercise judicial discretion taking into account all factors to achieve “a reasonable practical and just division.” The learned judge also noted that the respective contributions of the parties is but one of the seven considerations listed under section 7(4) of the Matrimonial Causes Act. It was further found that the intent of the legislature and indeed the courts’ objective is inclined towards “ensuring that the parties needs are met rather than that their contributions are recouped.”

I now relate the principles as enunciated above to this case.

The parties have been married since 1994 and were blessed with two children. They are both of middle age and still have it in them to work in their respective trades.

The family unit was mainly based at the Quinnington property. I note that although defendant appears to have made a higher financial contribution towards construction of the Quinnington property, plaintiff also made direct and indirect contributions. As a mother and wife and considering the long duration of the marriage her contributions are quite considerable. I am not lost to the fact that defendant holds a sentimental attachment to the Quinnington property because the stand sprung from his father’s estate.

The parties bought the Newlands flat together. They encapsulated this by endorsing both their names to the agreement of sale.

The Quinnington property is of higher value than the Newlands flat. The extent and location of the two are of considerable difference. The Newlands property is in a near proximity to other properties while the Quinnington property is a stand-alone vast property with a cottage. The plaintiff resides at the Newlands flat with the parties’ daughter while defendant resides at the Quinnington property. I also note that plaintiff obtained a mortgage bond over the Newlands property at a time when defendant could not access such a facility. Both parties are carrying on fruitful ventures with the plaintiff employed at Radnet while defendant carries on consultancy work.

I find that the parties also need a clean break and each to continue in their separate lives. Plaintiff has earned her shares through hard work. Defendant is running a consultancy through hard work and each should remain carrying on those endeavors.

I find that plaintiff should be awarded the Newlands flat while defendant should be awarded the Quinnington property. The parties have agreed on the distribution of the household property and the motor vehicles and I will encapsulate their proposals as an order of court.

To that end I will order as follows:

1. A decree of divorce be and is hereby granted.
2. The plaintiff be and is hereby awarded as her sole and exclusive property, 17 Windsor Avenue Newlands, Harare and the household goods and effects contained therein.
3. The defendant be and is hereby awarded as his sole and exclusive property, Lot 2 of subdivision E of Borrowdale Estate, measuring 4071 square meters and the household goods and effects contained therein.
4. The defendant shall sign the relevant documents for the transfer all of his shares in 17 Windsor Avenue, Newlands, Harare to the plaintiff's name within one month of this judgment. The plaintiff shall solely pay for such transfer and related costs.
5. The plaintiff be and is hereby awarded as her sole and exclusive property a Hyundai Creta motor vehicle, registration number AEK 8764.
6. The defendant be and is hereby awarded as his sole and exclusive property the following motor vehicles:
 1. a Mercedes Venz, registration number ACI 0930
 2. an Isuzu truck, registration number AAX 3164
 3. a Toyota Vitz, registration number ACV 4526
 4. No order is made in respect of plaintiff's shares in Radnet (Private) Limited
 5. Each party, shall bear his/her own costs of

WAMAMBO J:.....;

Atherstone & Cook, plaintiff's legal practitioners
DNM Attorneys, defendant's legal practitioners

