

FLORENCE CHIONISO GONDO  
versus  
WEBSTER GONDO

HIGH COURT OF ZIMBABWE  
CHIRAWU-MUGOMBA J  
HARARE, 12 and 20 July 2022.

### **TRIAL CAUSE**

*R. Zimvumi*, for the plaintiff  
*R. Munatsi*, for the defendant

CHIRAWU-MUGOMBA J:

[1]. This matter has its roots in an appeal noted to the Supreme Court by the plaintiff against the decision of the court in HH-747-20. The appeal was partly allowed and the order made is as follows: -

“IT IS ORDERED BY CONSENT THAT:

1. The appeal partially succeeds.
2. The judgment of the court *a quo* in respect of immovable property be and is hereby set aside.
3. The case is remitted to the court *a quo* for it to hear evidence on the valuation of immovable properties of the parties namely stand 2660 Prospect Township off stand 2900 Prospect Township, 174 Guildford of Borrowdale Estate and Stand 2565 Nyatsime, Chitungwiza redistributing the property between the parties.
4. Each party shall bear its own costs.”

[2]. The sticking point at trial is that there seemed to be no common understanding of the nature of the evidence to be adduced. As a result, the plaintiff insisted that the record of the Supreme Court proceedings should be made available. This according to her, was because the issue of the pension had been mentioned and it was relevant to these proceedings. My understanding of the Supreme Court order is that the parties were to place evidence of the value of the properties and the court would then consider the apportionment based on that evidence. This means that the court should consider this new evidence in relation to the

values as being in addition to that which came out of the trial. It goes without saying that the previous orders in relation to the three immovable properties is no longer applicable or relevant. To that extent, the evidence that came out of the trial remains relevant in relation to the immovable properties.

[3]. Following the Supreme Court order, the Registrar of the High Court at the instance of the plaintiff's legal practitioner with the tacit consent of the defendant, proceeded to appoint Ten Yards Real Estate to conduct the valuation. I say tacit because all mail was copied to the defendant's legal practitioners and there was no objection. At the hearing, I inquired from the legal practitioners whether they had discussed the matter. The response was that they had not. I also, with the consent of the legal practitioners engaged the parties outside of the trial on whether or not they had discussed the matter between themselves. This was informed by the fact that in the Supreme Court, they had consented to the appeal being partly allowed. They stated that they had tried numerous times to engage but that they could not come up with an amicable solution. I noted that both of them stuck to the positions they had adopted at the trial as is there right to do.

[4]. The valuation report was placed before the court on the 5<sup>th</sup> of May 2022. The values put on the properties are as follows: -

- a. 2660 Prospect – US\$80 000
- b. 174 Guildford - US\$180 000
- c. 2565 Nyatsime – US\$6000.

[5]. The importance of putting a value to immovable property was underscored in *Coumbis Vs Coumbis and anor*, SC 130-21 as follows.

“I am inclined to agree with the appellant that the court *a quo* erred in proceeding to distribute immovable properties without the benefit of a valuation because one immovable property of high value can be equal to several immovable properties of lower value. It is therefore essential to distribute properties in terms of their values to achieve an equitable distribution of the assets of the parties.

It must however be added that the court's wide discretion can only be exercised on the basis of the evidence led by the parties.....

In exercising its wide discretion, a court must determine the proportions on which it intends to distribute the assets to the parties. It should thereafter rely on the values of the assets to ensure that each party is awarded assets equal to the ratio it will have allocated to him or her. If, for example, the court allocates each party a 50 percent share of the value of the assets of the parties, it will then use the value of the assets to distribute them at the determined ratio”.

[6]. The evidence in relation to the immovable property save for the values had already been put before the court. The overall distribution of the movable property leaned in favour of a 50/50 distribution ratio.

[7]. The plaintiff led evidence on her own behalf. She was in agreement with the valuation report. She also stated that the Supreme Court had erred when it did not consider the issue of Stand 3314 Mainway Meadows that the court had not made an award on the basis that it was not a matrimonial asset. It is registered in the names of the children. In my view, that is not relevant to the apportionment of the three properties. On the other hand, the defendant had some misgivings with the report as it relates to the Guildford and Nyatsime stands. There was no other valuation placed before the court. Although initially the defendant's legal practitioner wanted the valuator called to testify, this was later abandoned. The plaintiff and as submitted by *R Zimvumi*, contends that she must be awarded 100% of the Guildford stand and 85% of the Prospect stand and that the defendant should be awarded 15% of the Prospect stand and 100% of the Nyatsime stand. On the other hand, the defendant as submitted by *R Munatsi* should be awarded 50% of all the properties.

[8]. In *Takafuma vs. Takafuma*, 1994(ZLR) 103 (S), it was held that where property is jointly registered such as Stand 2660 Prospect, the starting point is that it should be awarded on a 50/50 basis. The valuation report noted that the improvements on this property were in a reasonable state of repair though some defects were noted. It is situated on 540 square metres piece of land. Given its value of US\$80 000, in my view, an award that will be just and equitable is that the parties be awarded the property on a 50/50 ratio. I do not perceive anything as entitling one party to a lesser share than the other. The defendant obtained a loan from his employers to purchase the stand. He also sold a vehicle to finance the building of the house. The plaintiff also contributed significantly as shown on various receipts she produced to the building of the house.

[9]. In *M vs. M*, HH-51-12, MAWADZE J dealt with the issue of property of a sentimental value as follows.

“The question this court has to answer in my view is whether the Chegutu property which was donated to the defendant by her father has particular sentimental value to the defendant and therefore falls within the exceptions provided for in s 7 (3) of the Act.

The ENCANTA ENGLISH DICTIONARIES defines sentimental value as “value based on emotional association” or “ a value placed on something because of its emotional associations rather than its monetary worth.”

The defendant in her evidence told the court that she would not want the Chegutu property to be subject to sharing between the parties on account of her strong view that it constitutes part of what she deemed to be her “inheritance”. While the Chegutu property is

some commercial premises which can be utilised for that purpose by defendant herself or by renting it out to other parties the defendant did not give this as the reason for her desire to have the property excluded from the matrimonial estate by virtue of s 7 (3) of the Act. The reason she gave is that it is property given to or donated to her by her father just like all other children and her father has good reasons for doing so to all his children. It is my considered view that the Chegutu property has sentimental value to the defendant. She is emotionally attached to it taking into account how she acquired the property from her father. The value she places on the Chegutu property in my view is not much of monetary worth but the fact that her father in some special way decided to bequeath this property to her. The plaintiff in my view has no interest in the property and simply wants to use it to ward off the defendant's claim to Borrowdale property – a bargain tool as it were. It is therefore my finding that the Chegutu property falls within the exception provided for in s 7 (3) (c) of the Act. I shall therefore proceed to deal with the Borrowdale property as the sole immovable asset of the spouses subject to distribution”.

I distinguish that case from the present one. The contention by the plaintiff that the Guildford stand property is of sentimental value as expressed in s 7 (3)(c) of the act is misplaced. It is property that was acquired during the subsistence of the marriage and thus is an asset of the spouses. Granted, the plaintiff spent more money on its acquisition but that is a factor that the court can take into account in distributing the properties. The defendant also expended resources on the property. It was meant to be the family home. To exclude it from distribution would therefore go against the tenets of the Matrimonial Causes Act. The plaintiff seems to be driven by what she called an agreement not to co-mingle assets.

On Stand 174 Guildford, the value as stated is US\$180 000. I note that the documentary evidence supports the plaintiff's assertion that she contributed more than the defendant. She has also lost the spouse's pension and is staying at the property with the minor child. The agreement of sale is also in her name alone. The stand measures 2000 square metres in extent. The valuation report noted that the property was in a reasonable state of repair although some defects were noted. It is in a more upmarket area and is more valuable than the Prospect property. The evidence shows that whilst the plaintiff used her provident funds for the purchase of the stand, the defendant also contributed to the purchase of building materials including taking out loans. If the court was to go by the plaintiff's contention that she should be awarded 100% of this property plus 85% of the Prospect property and that the defendant gets 15% of Prospect property and 100% of Nyatsime stand, it would mean that out of the total value of US\$266 000 for all the three properties, the plaintiff would get an equivalent of US\$248 000. In other words, 93%. On the other hand, the defendant will get the equivalent value of US\$18 000, meaning, 7%. This will fly against the notion of the statutory target as espoused in s7(4) of the Matrimonial Causes Act [*Chapter 5:13*] Taking into account the

contribution of the plaintiff and the other losses she has faced and the fact that there is no justification to award plaintiff 100% of Stand 174 Guildford, the court awards this property as follows, 75% to the plaintiff and 25% to the defendant.

[10]. Both parties are more or less agreed that the Nyatsime property may not even be available. However, the court notes that they both contributed to its acquisition and therefore will award it on a 50/50 basis. The offering of this property to the defendant by the plaintiff is not sincere given the fact that both of them bear little hope that they will be able to salvage it. They both agreed that the area has been invaded and occupied outside the parameters of the law.

[11]. The above sharing will leave the parties with the following values. Plaintiff US\$178 000 and defendant US\$88 000. In my view, this will result in a just and equitable ratio given the fact that the plaintiff as stated has lost out on the pension and she has custody of the minor child though the defendant is contributing to the upkeep of the child. The defendant has also lost the entitlement to a spouse's pension.

[12]. Given that the properties have been valued already, the court will not grant another order for valuation. Since no party has been 100% successful, the most appropriate order for costs is that each party should bear its own costs.

### **DISPOSITION**

1. (a) The plaintiff and the defendant are awarded a property called Stand 2660 Prospect Township of Stand 2900 Prospect Township measuring 540 square metres held jointly in the ratio 50 % to the plaintiff and 50% to the defendant.

(b) The plaintiff and the defendant shall exercise the option of buying each other out based on the valuation report filed of record within 90 days of the date of this order.

(c) Should the plaintiff and the defendant exercise the buy-out option, documents necessary to transfer ownership shall be signed as applicable within seven (7) days of written request. Should any party fail to sign the necessary documents to effect transfer, the Sheriff of the High Court is authorised to sign all such documents.

(d) Should the plaintiff and the defendant fail to buy each other out as aforesaid, the property shall be sold to best advantage and proceeds shared in the ratio 50% to plaintiff and 50% to defendant.

2. (a) The plaintiff and defendant are awarded the property called certain piece of land situate in the district of Salisbury called Stand 174 Guildford of Borrowdale Estate in the ratio 75% to plaintiff and 25% to defendant.

(b) The plaintiff and the defendant shall exercise the option of buying each other out based on the valuation report filed of record within 90 days of the date of this order.

(c) Should the plaintiff and the defendant exercise the buy-out option, documents necessary to transfer ownership shall be signed as applicable within seven (7) days of written request. Should any party fail to sign the necessary documents to effect transfer, the Sheriff of the High Court is authorised to sign all such documents.

(d) Should the plaintiff and the defendant fail to buy each other out as aforesaid, the property shall be sold to best advantage and proceeds shared in the ratio 75% to plaintiff and 25% to defendant.

3. (a) The plaintiff and the defendant are awarded stand 2565 Nyatsime, Chitungwiza in the ratio 50% to plaintiff and 50% to the defendant.

(b) The plaintiff and the defendant shall exercise the option of buying each other out based on the valuation report filed of record within 60 days of the date of this order.

(c) Should the plaintiff and the defendant exercise the buy-out option, documents necessary to transfer ownership shall be signed as applicable within seven (7) days of written request. Should any party fail to sign the necessary documents to effect transfer, the Sheriff of the High Court is authorised to sign all such documents.

(d) Should the plaintiff and the defendant fail to buy each other out as aforesaid, the property shall be sold to best advantage and proceeds shared in the ratio 50% to plaintiff and 50% to defendant.

4. Each party shall bear its own costs.

*Ruth Zimvumi Legal Practice*, plaintiff's legal practitioners  
*Munatsi and Associates*, defendant's legal practitioners