

**JOE MOYO**

**Versus**

**ISABEL MOYO**

IN THE HIGH COURT OF ZIMBABWE  
MAKONESE J  
BULAWAYO 6 & 15 FEBRUARY 2018

**Civil Trial**

*T. Muganyi*, for the plaintiff

*L. Mcijo*, for the defendant

**MAKONESE J:** This one of those acrimonious divorces set down for trial simply because one of the parties adopts the attitude that “I did not cause the break-up of the marriage and therefore let the court terminate the marriage.” The plaintiff and the defendant were married in terms of the Marriage Act (Chapter 37) on 5<sup>th</sup> March 1992 at Harare. The marriage was blessed with 3 children who are now all majors. The marriage relationship between the parties has irretrievably broken down to such an extent that there are no prospects for the restoration of the marriage to a normal one. The plaintiff complains that the defendant denied him conjugal rights during the subsistence of the marriage. The plaintiff avers that he was forced to move out of the matrimonial home in 2005 due to the fact that the parties were no longer compatible. The defendant on the other hand alleges that the cause for the break-up of the marriage is the plaintiff who cohabited with another woman. Defendant stated that she discovered that another woman had taken up residence at the parties’ communal homestead. It was clear from the evidence of both parties that there was no love and affection between the parties. The parties were hostile towards each other. The marriage merely existed on paper.

The issues for determination are set out in a pre-trial memorandum filed by the parties as follows:

1. whether or not the marriage has irretrievably broken down
2. whether or not the Cowdray Park house is matrimonial property.
3. how many herd of cattle do the parties have?
4. what is the most equitable way of distributing the matrimonial property?
5. whether or not defendant is entitled to maintenance.

The plaintiff, **JOE MOYO** gave evidence under oath. He stated that he was a retired soldier. He was employed by the Zimbabwe National Army until his retirement in November 2013. He now resides at his communal lands homestead, in the Bubi District at stand 13 Gravesand, Molden Farm, Inyathi. He left the matrimonial home at 467 Emganwini, Bulawayo , in 2005 when the conditions became incompatible with a normal marriage. The defendant was no longer affording his conjugal rights and she had moved into a separate bedroom. The plaintiff now survives from farming activities and he keeps some livestock. Plaintiff testified that the parties acquired the following assets during the marriage:

- (i) stand 18456 Cowdray Park, Bulawayo
- (ii) stand 467 Emganwini, Bulawayo
- (iii) Mazda pick-up truck
- (iv) 2 x wardrobes
- (v) 1 x television set
- (vi) 1 x DVD player
- (vii) 1 x satellite decoder
- (viii) 1 x table and 4 chairs
- (ix) 1 x table with 8 chairs
- (x) 1 x 3 piece room divider
- (xi) 1 x kitchen unit
- (xii) 1 x lounge suite

- (xiii) 1 x display cabinet
- (xiv) 1 x upright refrigerator
- (xv) 1 x 4 plate stove
- (xvi) 2 x radios
- (xvii) 8 herd of cattle
- (ix) 7 donkeys
- (xx) Scotch cart
- (xxi) 1 x plough

Plaintiff indicated that now that the marriage was being terminated by this court, he would propose that the immovable properties at Cowdray Park and Emganwini be sold to the best advantage of the parties and the proceeds thereof be shared equally between the parties. Plaintiff testified that both houses were acquired during the subsistence of the marriage. He indicated that between 1998 and 2002, he was deployed in the Democratic Republic of Congo (DRC) where he was involved in military operations. During that time the defendant remained with the plaintiff's bank card and was able to make withdrawals for construction work that was carried out at Emganwini. As regards the Cowdray Park property, plaintiff discovered that defendant had acquired the stand clandestinely, using her maiden name. The property was constructed using funds provided by the plaintiff. As regards the movables, plaintiff stated that he was offering the defendant the following assets:

Mazda pick-up truck

1 x wardrobe

1 x double bed

1 x television set

1 x DVD player

1 x satellite dish

1 x table with 4 chairs

1 x room divider

1 x kitchen unit

1 x display cabinet

1 x 4 plate stove

1 x radio

It became apparent under cross-examination that the plaintiff had a stock register in his possession reflecting that he owned 8 herd of cattle. The last entry in the stock card is dated June 2017. There is, however, no other credible evidence to prove that the plaintiff owns 23 herd of cattle as alleged by the defendant. The defendant conceded that he had sold at least 2 herd of cattle. I am satisfied that the plaintiff was a credible witness whose evidence is consistent with the pleadings. His offer to divide the property in half appeared to be a genuine offer made with an intention to resolve the matter and bring it to finality.

The defendant **ISABEL MOYO** gave evidence under oath. She conceded that the parties had been separated since 2005 and had not shared conjugal rights since then. Defendant was adamant that the marriage collapsed due to the plaintiff's adulterous relationship with another woman. She stated that during her last visit to the communal home, she had refused to spend the night there due to the presence of this other woman. Defendant seemed to be very bitter about the breakdown of the marriage and refused to hand in the original marriage certificate, as a sign of her protest regarding these divorce proceedings. The defendant stated that she was not prepared to share the matrimonial property because she was not to blame for the marriage breakdown. She confirmed that since the parties' separation she has been residing at the

Emganwini property with the children. She stated that the Cowdray Park house was registered in her names. She stated that her son Joseph was however the real owner of the property. The defendant stated that the Cowdray Park house was constructed around the year 2009. She denied that plaintiff had contributed any money towards the construction of the house. Under cross-examination, defendant failed to provide any evidence to disprove the plaintiff's assertions that the house was matrimonial property. I am satisfied that the Cowdray park house is part of the matrimonial estate inspite of the fact that it was registered in the defendant's name. It was not disputed that plaintiff was in the DRC between 1998 to 2002 and that defendant was in possession of plaintiff's bank card at that time. Defendant was never formally employed and did not have any other income. She was a housewife. The court's finding is that both house 1846 Cowdray Park, Bulawayo and stand 467 Emganwini, Bulawayo are part of the matrimonial estate and therefore subject to division. I found the defendant to be an unreliable witness. She wanted the court to believe that plaintiff owned 23 herd of cattle inspite of the clear evidence of the number of cattle indicated in the stock card. The defendant stated that she had visited the plaintiff's kraal in his absence and had seen the cattle. She contradicted herself by asserting that she last saw the cattle in 2008 when she hired a truck from one "Storo", when she transported the cattle from Zenka to Bubi District. At that time the cattle were 7 in total. On the issue of the number of the cattle I am inclined to believe the plaintiff. The defendant stated that she was only prepared to have an award granting the plaintiff the following movable property and nothing more;

- (i) sofas (at communal home)
- (ii) Display cabinet
- (iii) Bed
- (iv) 4 donkeys
- (v) 4 head of cattle

From the evidence led it was clear that the defendant has benefited from staying at the Emganwini property since 2005. She has also been collecting rentals from tenants at the Cowdray Park house to the exclusion of the Plaintiff.

**Disposition**

In making an award of a division of the matrimonial assets I am guided by the provisions of section 7 (4) of the Matrimonial Causes Act (Chapter 5:13) which provides 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 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.”

An equitable distribution of the matrimonial assets in this matter takes into account the fact that the parties were married in 1992. Their children are all majors. The defendant is entitled to a fair distribution regard being had to the contribution she made towards the

acquisition of the assets of the estate. In my view, the parties must share the property equally. In the circumstances, I make the following order:

A decree of divorce be and is hereby granted.

The plaintiff is awarded the following property:

- (a) Homestead at number 13 Gravesand, Molden Farm, Inyathi
- (b) 1 x wardrobe
- (c) 1 x double bed
- (d) 1 x set of sofas
- (e) 1 x lounge suite

The defendant is awarded the following property:

- (a) Mazda pick-up truck
- (b) 1 x wardrobe
- (c) 1 x double bed
- (d) 1 x DVD player
- (e) 1 x television set
- (f) 1 x satellite dish
- (g) 1 x room divider
- (h) 1 x upright refrigerator
- (i) 1 x 4 plate stove
- (j) 1 x radio

- 4. (a) It is ordered that the immovable properties, being stand 18456 Cowdray Park, Bulawayo and 467 Emganwini, Bulawayo, be sold to the best advantage of the parties within 90 days of the date of this order and the proceeds thereof be shared equally between the parties.
  - (b) The Deputy Sheriff, Bulawayo be and is hereby authorized and empowered to sign any documents necessary to effect the sale and transfer of the properties in paragraph (a) hereof.
5. Each party is to bear its own costs.

*Tanaka Law Chambers*, plaintiff's legal practitioners

*Liberty Mcijo & Associates*, defendant's legal practitioners