

SIBONGILE MABANDLA (NEE MOYO)  
**versus**  
REGIS SAMSON MABANDLA

HIGH COURT OF ZIMBABWE  
MOYO J  
BULAWAYO 4 JULY 2018 AND 9 AUGUST 2018

### **Civil Trial**

*Ms N Moyo* for the plaintiff  
*B Masamvu* for the defendant

**MOYO J:** In this matter the plaintiff seeks an order for the redistribution of the parties immovable assets namely Lynwood Estate being a farm.

The facts of this matter are that plaintiff and defendant were once husband and wife. They got divorced in this matter way back. Defendant however, sought and obtained an order for the rescission of the clause that dealt with the redistribution of Lynwood estate which has been wholly awarded to the plaintiff.

The dispute between the parties with regard to this sole issue is that: Plaintiff avers that defendant and himself were just known to each other, and that they were ordinary friends. She trusted defendant who was a respected man in the area, and decided to entrust him with the acquisition of the property in dispute. Defendant did the running around and the payments for the farm. Plaintiff's case is that defendant is not entitled to any share of the farm and that she has duly made a gratuitous offer of 80 hectares which she believes defendant does not even deserve.

Defendant on the other hand avers that he is entitled to 50% of the farm and that in fact it was jointly acquired during the period when the parties were in a customary law union before solemnizing their marriage.

From the facts it is clear that:

- a) Whatever kind of relationship the parties had in 2001 when the farm was purchased, they however related in some way resulting in the purchase of the farm. Plaintiff says they were then acquaintances. Defendant says they were then husband and wife.
- b) They were both involved in the purchase of the farm in whatever capacities.
- c) That at some stage they were in a customary law union and later they solemnised the marriage.
- d) The relationship later went sour resulting in the divorce proceedings that were finalized and later re-opened before this court.

#### Plaintiff's case

Plaintiff's case is that at the material time, they were just acquaintances. That she used defendant on the purchase of the farm as she trusted him more than her own relatives. That she paid the entire purchase price as she was gainfully employed in the United Kingdom and she also had a company in Zimbabwe namely Utkinton Investments where defendant was a signatory and he would make a payment towards the deposit on the purchase of the farm from the company back account on plaintiff's instructions .

#### Defendant's story

Defendant says they purchased the farm as a husband and wife and that he contributed money towards the purchase of the farm.

The sole issue for determination here is whether this farm is matrimonial property, that is, whether the parties were in a marital relationship at the time it was acquired or not. Either party has to prove what they allege on a balance of probabilities.

On the probabilities the court makes the following findings:

- 1) That the probability that the parties were either “married” or operating as a married couple are high in that:
  - (a) The relationship that they had per plaintiff’s version is not clear. The relationship fits the version as given by the defendant in that in the ordinary course of life, spouses or spouses-to-be make each other signatories or proxies in banking matters. Spouses or spouses –to-be also entrust each other with asset acquisition and registration.
  - b) The agreement of sale has both the names of the parties with plaintiff’s surname given as that of the defendant implying that at the time the agreement was entered into, the two were spouses of spouse-to-be.
  - c) That the title deeds are in the name of the plaintiff using defendant’s surname and that there is an unusual clause in the title deeds inscribed “married to Regis Samson Mabandla.” Plaintiff avers that this shows that the property is hers alone as clearly no married man in African culture would put a wife’s name on a title deed.

The defendant on the other hand, explains that he was due to travel for a workshop in Harare, when the Deeds Registry declined to register the property in joint names as that would contravene a section of the Rural Lands Act [Chapter 20:18].

The plaintiff was around at the material time and he saw it fit that since plaintiff would be available to attend to whatever issues would arise in his absence, it was better that they remove his name, leave hers but insert an inscription that plaintiff married named to him to protect his interests. He further stated that he did not want the matter to be postponed until he came back from Harare as they needed to get the title urgently because this was during the height of the land reform programme and therefore there was a risk that any delay in getting the title could mean that they would lose the farm to government as it was in the name of a white person and farms from owned by whites were the ones that were being targeted at the relevant time. This explanation is plausible in my view and cannot be faulted in anyway. It cannot be held to tilt the probabilities in plaintiff’s favour in my view.

- c) In court the plaintiff gave evidence to say defendant and herself were just acquaintances at the material time they were to later engage in a romantic relationship and then later got married customarily.

This, however, is a material departure from her own summons that she filed in 2004 when her memory was still fresh. In the declaration attached to her summons paragraph 8 thereof she avers that

“It would be just and equitable that upon a decree of divorce being granted, the immovable property of the marriage, namely Lot 5 of Hillside Gweru, also known as Lynwood Estate, be sold to best advantage and the proceeds be shared equally between the parties.”

In his plea, paragraph 4 thereof defendant says:

“it is just and equitable that the parties be each awarded 50% share in the property but instead of the property being sold, he would want the property evaluated and thereafter he buys out plaintiff’s half share.”

In her synopsis of evidence, issued on 17 June 2016, plaintiff avers in paragraph 2 that:

“At the time, plaintiff and defendant were in courtship and they had known each other since 1996.”

Courtship is defined in the Oxford Dictionary as “a period during which a couple develop a romantic relationship before getting married.”

The synonyms for the word courtship are given in the same dictionary as:

“Love affair, romance, engagement, dating, going out.”

This means when she says they were in courtship they already had a romantic relationship. Whilst a romantic relationship is not a marriage and does not formulate any basis for the redistribution of assets, it tilts the scales in defendant’s favour in that, it is a generally accepted behaviour for couples in courtship and looking forward to marriage to pool resources in contemplation of marriage. Again, this aspect works in defendant’s favour in that in court while she gave her evidence-in-chief plaintiff flatly denied any relationship with defendant save for an ordinary relationship of acquaintances. This works against the plaintiff and in favour of the defendant because, why does she on one side say it was courtship and on the other say no it was

just an ordinary relationship? What is the truth? Its either of those are the truth or the truth lies somewhere else? What is her incentive for describing one relationship and giving it different forms for the same period? Is the incentive not to shoot down defendant's claim?

Again, plaintiff's tongue sipped under cross-examination when she was asked the question "why did you let defendant write an acknowledgement of receipt to the effect that it was him who made a payment towards the purchase price, since you were together and you could object and have your name written as the payor on the acknowledgement and she said "in our culture if you are a wife you let your husband do certain things." So at the time they made this payment she was a wife to the defendant?

Again, she discovered at payment stage that defendant had put his name on the agreement of sale and that her own name was written with defendant's surname implying that she was a wife but she did not challenge all those things if at all they were a misrepresentation of facts by the defendant. The sum total of all these facts on plaintiff's behaviour and her own words is that even herself, she was convinced that the farm is matrimonial property and that it should be shared equally between the parties. There is no other fact to prove otherwise in the court record.

It is for these reasons that this court finds that the probabilities in this case cummulatively weigh in favour of a finding that the property was acquired jointly by the parties. It is for these reasons that I will make the following order.

It is ordered that:

- 1) The property known as a certain piece of Land situate in the district of Gwelo being Lynwood estate in extent 282, 3538 hectares be sold to best advantage and the net proceeds therefrom be shared equally between the parties
- 2) That each party bears its own costs.