

SIHLESENKOSI NDLOVU (nee MASUKU)
versus
TIGHT NDLOVU

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 7 MARCH 2019 AND 21 MARCH 2019

Civil Trial

Z Ncube for the plaintiff
Defendant in person

MOYO J: This is an action for divorce on the grounds of irretrievable breakdown of marriage.

The parties were married to each other on 13 November 2007 in terms of the Marriage Act [Chapter 5:11]. The marriage still subsists. There is one minor child born of this marriage namely Thubelinhle Ndlovu a boy born on 20 April 2008.

The parties have since lost all love and affection for each other and the issue of irretrievable breakdown of the marriage is not determination by this court as it is common cause between the parties.

Initially there were two issues for determination, that is, the issue of custody, maintenance and access in relation to the minor child and the issue of whether or not stand number R/E of Lot 68 North Trenance Bulawayo is matrimonial property and how it should be redistributed, if it is.

The first issue of custody/maintenance and access fell away after the defendant told the court that he did not mind that the child lived with the mother and that he continues taking care of his schooling needs. On the other hand, plaintiff also abandoned her claim for maintenance and said she was comfortable with the defendant meeting the child's schooling needs. The only issue for determination therefore is that of stand 68 North Trenance in Bulawayo.

The parties started living together in 2007. Stand 68 Trenance was purchased from the City of Bulawayo on 28 July 2010. Whilst the parties take us through a long history of their separate lives before they met, where plaintiff had a stand in Cowdray Park and defendant had a house in Luveve, both parties admittedly disposed of these properties, with defendant disposing of his own property prior to marriage and plaintiff disposing of her own property during the subsistence of this marriage. Defendant avers that he bought the Trenance stand from the proceeds of his Luveve house which he had acquired prior to his marriage to the plaintiff. Plaintiff disputes that and avers that she had lent defendant some money during their wedding proceedings and he paid back the money through purchasing some bricks for her for construction on her Cowdray park stand (as she intended to build her Cowdray park stand, and had in fact lent plaintiff monies off her Cowdray Park construction funds). She told the court that defendant later sold these bricks by agreement and paid for the Trenance stand.

Whilst defendant disputes this, defendant agrees that plaintiff sold her own stand, started some business ventures which later failed and only gave him \$1000-00.

During the subsistence of the marriage both parties worked, plaintiff as a vendor and cross border trader and defendant as a tailor and a farmer. They both contributed to the subsistence of their household.

Even without looking at who did specifically what, the spirit in this household as evidence by the parties was that of teamwork. They both worked for their household in different ways. Plaintiff even disposed of her Cowdray park stand whilst in this marriage and used the proceeds within the marriage because even if she started business ventures that did not later pay, nonetheless, when she started them obviously it was in the spirit of advancing their household. Defendant himself is a beneficiary of the proceeds of plaintiff's stand and therefore it does not matter the proportions or ratios, what matters is the spirit of pooling resources in a bid to build a household together and to advance the household's interests. Plaintiff also paid off some debts relating to electricity bills that had accumulated over some time.

The Trenance stand was acquired in 2010 per the legal documents tendered and it does not matter in my view when the preparatory work to acquire it commenced, what matters is that it was bought during the subsistence of the marriage per the legal documents. Again, looking at

how these parties conducted themselves it would be difficult to isolate this particular stand from the marriage, as clearly the parties pooled even their pre-marital resources for the benefit of their household.

In any event section 7 of the Matrimonial Causes Act [Chapter 5:13], does not exclude property acquired prior to marriage in redistribution of assets at divorce (worse still it makes no mention of funds brought into the marriage, which were acquired before the marriage). It follows therefore that it is of no consequence whether defendant brought in funds acquired before marriage to purchase this stand or not. If the court were to exclude any savings made by parties prior to the marriage then this would defeat the whole spirit and purpose of marriage.

Marriage in itself being a mutual understanding to become one, to unite and become a team, to work together for the good of both spouses and to be joined together in all respects, cannot be seen to exclude savings that a party walks into a marriage with, neither can it be held to exclude any baggage or burdens that a party walks into the marriage with. In as much as spouses share debts, they also should benefit from each other's savings. In fact that is the very essence of marriage, togetherness in all respects. In any event, in this case parties brought into the marriage an immovable property for the benefit of the marriage. Plaintiff brought in the cowdray park stand and defendant brought in savings from the sale of his Luveve house. It is only fair that whatever immovable property they later acquired during the marriage, should be redistributed fairly and equitably.

I accordingly find that stand number 68 Trenance is matrimonial property as reasoned herein.

I accordingly make the following order. It is ordered that:

- 1) A decree of divorce be and is hereby granted.
- 2) The custody of the only child of the marriage namely Thubelihle Ndlovu a boy born on 24 April 2008 is awarded to the plaintiff with the defendant having access on alternate weekends and for half the school holidays.
- 3) The defendant shall provide for the child's schooling needs until when he completes tertiary education.

- 4) The immovable property known as R/E of Lot 68 North Trenance shall be evaluated by a reputable firm of estate agents and either party shall have a right to purchase the other's share (which is 50%) within 90 days (weekends and public holidays included) from the date of evaluation.
- 5) If neither party buys out the other within 90 days as provided in paragraph 4 herein the property shall then be sold to best advantage and the net proceeds therefrom shared equally between the parties.
- 6) If one party buys the other out, or if the property is sold in accordance with paragraph (5) herein, the Sheriff of Zimbabwe shall be empowered to sign all the necessary documents to perfect the sale and to effect transfer, if ever one of the parties neglects their duties in relation thereto and in terms of this order.
- 7) Each party shall bear its own costs.

Ncube and Partners, plaintiff's legal practitioners