

ALSPITE INVESTMENTS (PRIVATE) LIMITED
versus
TENDAYI WESTERHOFF

HIGH COURT OF ZIMBABWE
MAKARAU JP
HARARE 9 June, 6 and 7 July and 7 October 2009.

TRIAL CAUSE

Mr T B Ndoro for the plaintiff;
Mr N Zvidzai for the defendant.

MAKARAU JP: The defendant was married to one Clemens Westerhoff in terms of the marriages Act [Chapter 5.11]. The marriage was dissolved by this court on a date that is not readily ascertainable and is any event immaterial for the purposes of this trial.

During the subsistence of the marriage, the parties had acquired an immovable property called Stand 491 Mount Pleasant Township 13 of lot 33 of Mount Pleasant. This, they set up as the matrimonial home. Title in the property was held freehold by a company called Westerhoff Investments (Private) Limited. It is common cause that the parties regarded the company as their joint alter ego, set up primarily for the purposes of holding title in the property.

Prior to divorce, and with the assistance of the judge who presided over a pre-trial conference in their matter, the parties settled as between themselves, a consent paper, which disposed of the issues of paternity and maintenance for the minor child of the marriage and the distribution of the joint estate. The consent paper was, at the time of the divorce, incorporated into and became part of the divorce order.

Regarding the fate of the matrimonial home, the court ordered as follows, following the wording of clause 5 of the consent paper:

“5. After the results of the paternity tests, the following scenario will obtain:

- (a) The property known as No 29 Morningside Drive, Mount Pleasant, Harare, shall be valued for commercial purposes and the value shall be divided in such a manner that:
 - (i) if the plaintiff is the natural father of the minor child, plaintiff gets a 40% share, the defendant a 40% and the minor child 20% share, and the defendant shall pay to the plaintiff such amount as may be the difference between the plaintiff's 40% share and the sum of \$110 million which is the lump sum payment for the maintenance of the minor child in full and final settlement as provided for in clause 2 hereof; and

- (ii) If the plaintiff is found by results of the tests not to be (the) natural father, then the ratio shall be 60 % for the plaintiff and 40 % for defendant.
 - (b) The valuation provided for in clause 5 (a) hereof shall be conducted by an independent valuer appointed by the Master of the High court from his list and such valuation shall be conducted and concluded within 7 days of receipt by plaintiff (who shall serve the results on the defendant's legal practitioner within 7 days of receipt of them) of the results of the valuation.
 - (c) The costs of the valuation shall be borne by plaintiff and defendant in the ratio of 50% plaintiff and 50% defendant. The valuation costs shall be paid for in full by plaintiff to facilitate the process and he shall be refunded his share by defendant at the time that defendant pays what is due to plaintiff either in terms of clause 5 (a) (i) or clause 6.
 - (d) Should the defendant fail to pay the amount payable to plaintiff within 12 months of the date of valuation, then and in that event, and without notice to defendant, the plaintiff shall be entitled to sell the immovable property, and from the proceeds pay \$110 million as provided for in clause 2, to defendant for the minor child and 40% of the proceeds to the defendant as her share. In a sale in terms of this clause, the defendant herein irrevocably appoints her legal practitioner, failing him the Sheriff or his lawful deputy to sign all documents necessary to effect the sale and resultant transfer, and the rates duties and other taxes payable by reason of the transfer including transfer fees shall be paid from the proceeds of sale.
6.
7.
8.”

It is common cause that in January 2006, the property was evaluated for the purposes of clause 5 (a) of the divorce order. This was to set the value of the property at which the plaintiff before me, then defendant, could “buy off” her former husband’s share in the property to enable her to acquire joint title with the minor child in the property, to the exclusion of her former husband. The defendant had a year in which to do this and the clock started ticking against her in January 2006.

It is further common cause that the defendant failed to raise the requisite funding necessary to bring into effect the provisions of clause 5 (a) (i) of the order. She could not buy out her former husband and her failure to raise the necessary funding triggered the provisions of clause 5 (d) of the divorce order. In terms of this clause, the property had to be sold and the proceeds parceled out in a pre- determined ratio.

Again it is not in dispute that in the course of time, the property was sold to the plaintiff. Transfer of title was conveyed to the plaintiff and in due course, the plaintiff sought the eviction of the defendant from the property. The defendant resisted the plaintiff’s claim for eviction and this is the suit that came before me.

In defending the eviction summons at the instance of the plaintiff, the defendant pleaded that the agreement of sale to the plaintiff was defective, transfer to the plaintiff was fraudulently procured and was to the prejudice of the defendant and the minor child of the marriage. In the plea, the defendant prays for the sale and subsequent transfer of the property to be set aside.

At the pre-trial conference of the matter, where in terms of our procedures, all legal issues ought to have been crystallized, the matter was referred to trial on the following issues:

1. Whether or not the agreement of sale entered into by and between plaintiff and Westerhoff Investments (Private) Limited in respect of the property known as no 29 Morningside Drive My Pleasant Harare and its subsequent transfer by the latter to the former is valid at law.
2. Whether or not plaintiff is entitled to an order for the eviction of defendant from the premises.
3. Who between the parties should bear the costs of suit?

In my view, the matter could have been handled differently at the pre-trial conference. Firstly, it does not appear clear to me what defect the defendant alleged was attendant upon the sale of the property and how this defect would at law have the effect of vitiating the contract. No further particulars were sought or given regarding this alleged defect. Secondly, the details of the alleged fraudulent transfer were not fully disclosed in the pleadings and in the summary of evidence filed on behalf of the defendant. Again no further particulars were sought or given on this issue.

It would appear that in terms of the defendant's summary of evidence, and indeed according to the evidence led at the trial, the defendant took issue with the fact that she was not consulted on the ultimate price at which the house was sold to the plaintiff. She is of the view that the property was sold at an unreasonably low price to her prejudice as she then could not buy another property from her share of the proceeds.

I raise these issues at this stage as the issues that were pleaded and the issue upon which evidence was led differed. Had the judge presiding over the pre-trial conference been more robust and probed the defendant's defence, he or she may have assisted the parties to realize the correct issue that falls for determination in this trial. The parties may then have been more focused in the presentation of their cases. As it turned out, no fraud was proved or relied upon and the alleged defect in the agreement of sale as pleaded was not advanced

further than the plea. The trial of the matter was thus on an issue that had not been pleaded. However, in view of the fact that such issue was fully ventilated during the trial, I will proceed to treat it as the sole issue in the trial.

To substantiate its claim, the plaintiff first called Joseph Mandizha. He was approached by a third party to act on behalf of the defendant's former husband. He was instructed to carry out the terms of the divorce order as between the parties and as it related to the distribution and disposal of the former matrimonial home.

In January 2007, the witness advised the defendant that he had been instructed to cause the sale of the property. His instructions had been for him to proceed without informing the defendant as her time to act had come and gone by. He met with the defendant and her legal practitioner and they discussed the matter. He informed the defendant and her legal practitioners on how he intended to dispose of the property. He indicated to the defendant that while clause 5(d) did not place any obligation on him to consult her in disposing of the property, he would nevertheless keep her informed of developments out of courtesy.

Before putting up the property for sale, the witness caused a market appraisal of the property to be done. The estate agents that were approached to carry out this appraisal included Heaven on Earth, an agency in which he is the majority shareholder. After the appraisal, instructions were given to Heaven on Earth to sell the property. It is at this stage that reports were received that to the effect that the defendant was objecting to the mandate given to Heaven on Earth Real Estate to sell the property. She sought to introduce a new agent to handle the sale. Undeterred by the efforts taken by the defendant to stall the selling of the property, the witness had the property sold to the plaintiff in June 2007. The defendant was advised of the sale of the property through correspondence to her legal practitioners. Requests were made for the attendance of the defendant upon the witness for the signing of the agreement of sale. It is at this stage that the defendant intimated that the property could be sold for a higher price. It was indicated to the witness by the defendant's legal practitioners that in view of the prices she was expecting, she was unlikely to sign the agreement of sale which reflected a purchase price of \$13 Billion. He received the purchase price for the property and then proceeded to facilitate the registration of transfer of the property to the plaintiff.

In disposing of the property, he never had sight of the articles of Association of the company that held title in the property. He merely followed the dictates of the court order as to how the property was to be disposed and the proceeds distributed between the divorced parties and

their minor child. While the parties held a meeting before the property was sold, it was never his intention to renegotiate the dispute between the parties or to be taken outside the provisions of the divorce order. His instructions were not to revisit the distribution of the property. When he was genuinely convinced that the defendant would not sign the agreement of sale, he requested the Deputy Sheriff to sign on her behalf in accordance with the court order.

The witness gave his evidence well and was very candid with the court. His explanations were full and while one may not agree that it was prudent of him to instruct his own agency to sell the property, one cannot on that basis find that he was an unreliable witness.

Next to testify on behalf of the plaintiff was one Tongoringa Mubaiwa. He is an estate agent, working for Heaven on Earth Real Estate. He handled the sale of the property in dispute. Prior to putting up the property for sale, he did a market appraisal of the property. He compiled a report of his findings. He was then given instructions to market the property which he did. Eventually he sold the property to the plaintiff. He drafted the agreement of sale which was signed in due course.

The witness gave his evidence well. He fared well under cross-examination. His answers and explanations were easy to follow. I find him a credible witness.

The plaintiff called Muriel Chengetai Dowa as its third witness. She represented the directors of the plaintiff in the purchase of the property.

She was under instructions from the plaintiff to look for a property. She at one stage responded to an advertisement by Heaven on Earth for a property in Mt Pleasant. The deal fell through. She then advised the estate agency to contact her should they have another property in the same area for sale. After some time, she was informed of the property in dispute. She was advised that the property was being sold as a result of a divorce. She could not view the property but was shown pictures of same. The directors of the plaintiff advised her to seek legal advice before proceeding. She did and proceeded to buy the property. Eventually the property was transferred to the plaintiff and when she tried to gain access to the property after transfer, she was denied same by the defendant.

I find no fault with the evidence and manner of testifying of this witness. I shall rely on her evidence.

After the evidence of this witness, the plaintiff closed its case.

The defendant called one Bruce Beaven Mujeyi to give evidence first. He was acting as the legal practitioner of the defendant during the hearing of the divorce matter and was

especially instructed to deal with the matter of the disposal of the matrimonial home. At the time he received instructions to act in the matter, the matter had received a lot of publicity and tensions were high on either side. The legal practitioner who had acted for the defendant's husband during the divorce proceedings had renounced agency and he had to deal with Mr Mandizha, who like him, had been instructed to act in the matter after the divorce had been granted. Mr Mandizha wrote to the defendant advising her that he was now handling the matter. He responded to the letter by telephoning Mr Mandizha. They agreed to meet. In view of the fact that neither he nor Mr Mandizha had handled the much publicized divorce, he suggested that the best way forward was for the parties to negotiate their way through the disposal of the former matrimonial home. He was aware of the divorce order and the consent paper on which the order was based.

In the meeting, Mandizha agreed to keep him abreast of developments as he had the company documents and the deed of transfer in respect of the property. He also understood that the draft agreement would be forwarded to him for his input.

Regarding the agency of Heaven on Earth in the matter, the defendant was clearly uncomfortable that an agency in which Mandizha had an interest should be used to sell the property. On the instructions of the defendant, he addressed a letter to Mandizha expressing these concerns. When Mandizha responded showing little concern for this since his client had no problem with the arrangement, he filed an urgent application on behalf of the defendant, seeking to interdict Heaven on Earth from proceeding. Regrettably, the matter was not determined as the judge before whom the urgent application was placed ruled that the matter was not urgent as there were other remedies available to the defendant.

His further understanding was that if the property was to be evaluated, this had to be done by an estate agent on the Master's roll.

The defendant also informed him that she had problems with people coming to view the house. Since the parties had agreed to negotiate, they had not agreed on who was to carry out the evaluation of the property. His client was aggrieved by this as it went against the spirit of the meeting while Mandizha was equally aggrieved by what he perceived as lack of cooperation from the defendant. He was somewhat caught in the middle.

On 25 June 2007, he received notification that the property had been sold and requesting his client to sign the draft agreement of sale. He had not been shown a copy of the draft. He was constrained to write to Mandizha informing him that he could not sign the

agreement on behalf of his client, that his client was out of the country and that she would take issue with the price at which the property had been sold. From the response he received, he gained the impression that he should wait for Mandizha's further advice. The letter read:

"Your letter of 26th instant received in fax form refers. (Sic)

We advise that it has been referred to our client. We will revert to you once his instructions are to hand."

When his client returned, he contacted Mandizha to advise him that the parties could now move forward. He was advised that the property had been sold. For his client's signature, Mandizha had approached the Deputy Sheriff. He then advised his clients of the developments and the two parted company after he felt that it was best that another law firm takes over the matter as the defendant felt that she had been let down.

The witness gave his evidence well. He was quite clear in his responses to questions and while his reading of the divorce order may have been different to mine in some respects, that is not a basis for impugning his credibility.

The defendant also gave evidence.

During the subsistence of her marriage to her former husband, the two bought a property that was registered in the name of a company. At the time of the divorce, the parties entered into a consent paper.

She tried to raise money to "buy the defendant out" but failed. She is living openly with HIV/AIDS and was not in gainful employment at the time. When she realized that she could not raise the necessary funds to buy him out, she tried to sell the property within the one year stipulated in clause 5 of the divorce order. She failed.

In January 2007, she received a letter from Mandizha advising her that he wanted to sell the property. She attended a meeting with Mr Mandizha in the company of her legal practitioner. It was agreed at the meeting that the fighting between the parties should come to an end, that the parties would henceforth resolve all issues amicably and that the parties would be in constant communication over the disposal of the former matrimonial home. At the meeting no mention was made of the estate agency that would dispose of the property.

A day after the meeting, an agent from Heaven on Earth came to the property to carry out an evaluation of the property. She allowed him in. Later on she did not open her gate to him and to people who wanted to view the property. She had issues with the whole process as she had not received the valuation report to compare it with her own idea of how much the property should fetch. When she finally received the evaluation report, she then realized that Mandizha was one of the directors of Heaven on Earth. She raised the issue with her legal

practitioner. She felt that there was an obvious conflict of interest in that Mandizha represented her former husband, was selling the property through his agency, would do the conveyancing and then distribute the proceeds from the sale to the parties as between the parties and the minor child. The matter came to court but unfortunately the urgent application was not granted.

While waiting for developments in the matter, she instructed her lawyers to place a caveat against title to the property as she felt that she had real rights in the property that needed protection. She was also protecting the interests of the minor child.

Some time later she sent an e-mail to her lawyer, suggesting that an independent estate agent be appointed to handle the sale. She suggested one. She copied the e-mail to Mandizha. In the e-mail she also gave her own suggestion of the fetching price for the property.

She left Harare for some time and when she returned, she was advised that the property had been sold. She was not happy. She went to her legal practitioner and asked him to stop the transfer and he filed an urgent application. She went to the anti-corruption unit and lodged a complaint. Before the urgent application to stop the transfer could be heard, Mandizha appeared and showed them the deed of transfer. She then withdrew the case.

At one point she expected her former husband to call for a company resolution on the disposal of the property.

In her view, her former husband did not comply with the court order from the beginning. Her legal practitioners ought to have been shown a copy of the draft agreement. They were not.

At the same time she was also looking for another house to buy. The price fetched for the former matrimonial property was not sufficient to meet her obligations in procuring another property.

In conclusion, she prayed for an order setting aside the sale and transfer to the plaintiff and for the property to be resold under the supervision of the Master of this court.

The defendant was understandably highly emotional when she gave her evidence. This however did not deter her from giving her opinion on how the former matrimonial home should have been disposed of. Her testimony was to a large extent corroborated by that of her former legal practitioner. I have no cause to disbelieve her on fact. Due to the emotion which the defendant testified and presumably which she attaches to this matter, I have reproduced her

testimony in greater detail than for any other witness deliberately as I shall try and examine each issue that she has raised in her evidence and upon which she rests her defence.

It is not in dispute that the plaintiff has brought *the rei vindicatio* against the defendant. As aptly summarized by *Mr. Ndoro* in his closing submissions, the plaintiff has approached this court as an owner of the property to seek the ejectment of the defendant simply on the basis that it is owner and is thus entitled as such to enjoyment of its property.

The *rei vindicatio* is an action that is founded in property law. It is aimed at protecting ownership. It is based on the principle that an owner shall not be deprived of his property without his consent. So exclusive is the right of an owner to possess his or her property that at law, he or she is entitled to recover it from wherever found and from whomsoever is holding it without alleging anything further than that he or she is the owner and that the defendant is in possession of the property. Thus it is an action *in rem*, enforceable against the world at large.

This is settled law in this jurisdiction which hardly requires authority. (See *Sibanda v The Church of Christ* 1994 (1) ZLR 74 (SC); *Musanhi v Mt Darwin Rushinga Cooperative Union* 1997 (1) ZLR 120 (SC); *Mashave v Standard Bank of South Africa Ltd* 1998 (1) ZLR 436 (S) *Jolly v A Shannon & Anor* 1998 (1) ZLR 78 (HC) and *Stanbic Finance Zimbabwe Ltd v Chivungwa* 1999 (1) ZLR 262 (HC).)

The bedrock of all the above decisions is *Chetty v Naidoo* 1974 (3) SA 13 (A) where at 20B-D, Jansen JA had this to say:

"It is inherent in the nature of ownership that possession of the *res* should normally be with the owner, and it follows that no other person may withhold it from the owner unless he is vested with some right enforceable against the owner (eg. a right of retention or a contractual right). The owner, in instituting a *rei vindicatio*, need, therefore, do no more than allege and prove that he is the owner and the defendant is holding the *res* - the onus being on the defendant to allege and establish any right to continue to hold against the owner."

There are primarily two defences to the *rei vindicatio*, each aimed at destroying each of the two essential elements of the action. The first one seeks to destroy the claim of ownership completely by denying that the plaintiff is the owner of the property in question or seeks to diminish his rights in the property by admitting his or her ownership but by alleging that the plaintiff has parted under some recognized law, with the right to exclusive possession of the property. The second defence of course is to deny possession of the property at the time the action is brought or the claim is instituted.

There are no equities in the application of the *rei vindicatio*. Thus in applying the principle, the court may not accept and grant pleas of mercy or for extension of possession of

the property by the defendant against an owner for the convenience or comfort of the possessor once it is accepted that the plaintiff is the owner of the property and does not consent to the defendant holding it. It is a rule or principle of law that admits no discretion on the part of the court. It is a legal principle heavily weighted in favour of property owners against the world at large and is used to ruthlessly protect ownership. The application of the principle conjures up in my mind the most uncomfortable image of a stern mother standing over two children fighting over a lollipop. If the child holding and licking the lollipop is not the rightful owner of the prized possession and the rightful owner cries to the mother for intervention, the mother must pluck the lollipop from the holder and restore it forthwith to the other child notwithstanding the age and size of the owner-child or the number of lollipops that the owner-child may be clutching at the time. It matters not that the possessor child may not have had a lollipop in a long time or is unlikely to have one in the foreseeable future. If the lollipop is not his or her, he or she cannot have it.

In *casu*, the plaintiff has not denied that the plaintiff is the owner of the property. She has not denied that she is in possession of the property in issue. She has however sought to attack the right of the plaintiff to exclusive use of the property on the basis that she was unfairly treated by her former husband and his agents when the property was disposed of.

In my view, the defendant's case is hampered by the application of three legal principles.

Firstly, she is relying on the consideration of equities in the matter to deny the plaintiff exclusive enjoyment of its property. I repeat her evidence in this regard. She could not raise enough funds to purchase her former husband's share in the property as she was not in gainful employment at the time. She could not raise any loans as she is publicly known to be living with the HIV/AIDS virus. She intended to purchase another property for herself and for the minor child of the marriage. She could not do so from the proceeds of the sale of the property as her share was too low. The success of this suit against her will literally make her and the minor child of the marriage homeless.

On the other hand, the plaintiff has bought the property for investment purposes. It does not require the property for its own accommodation but as an income generating investment. Thus on equities alone, the defendant has a strong case.

Having heard and seen the defendant testifying and having listened to the impassioned plea that she was making to the court for a break for herself and the minor child of the

marriage and having heard the anguish in her voice, I would have, if I had any, used my discretion in her favour and granted her prayer. I have none. The law gives me none. I have no power to abrogate any to myself to change the principles of the *rei vindicatio* to bring in the consideration of equities into the matter. My hands are tied. I must apply the law that denies her a remedy even if I am keenly aware of her circumstances.

Secondly, the defendant has not raised any personal relationship with the plaintiff in terms of which the plaintiff may be estopped from taking possession of the property from her. The legal authorities are all clear that in a *rei vindicatio*, where the defendant shows that he or she has some right of possession enforceable against the owner, then the action cannot succeed. To succeed in defeating the action, a defendant must therefore set up facts that establish a legal relationship in terms of which possession of the property by the defendant is justifiable.

It is a settled position at law that it is only when the wife in the position of the defendant proves that the plaintiff has associated with her former husband to defraud her of her rights in the former matrimonial home can she resist an action of eviction at the instance of the plaintiff. (See *Ferris v Weaven* 1952 (2) ALL ER 23; *Maganga v Sakupwanyana* 1996 (1) ZLR 217 and *Nene v Nyatwa* SC 119/91).

In *casu*, no suggestion was ever made in evidence that the plaintiff fraudulently associated with the defendant's former husband to defeat her just claims in the former matrimonial home. If anything, all the blame was heaped on the legal practitioner acting for the defendant's former husband for violating the consent order in more than one respect.

I have been referred to two decisions of this court that seem to go against the finding that I make in this matter. (See *Ndlovu v Ndlovu* HH 15/04 and *Chapeyama v Chapeyama* HH96/05).

In *Ndlovu v Ndlovu* (supra) I made the finding that the personal rights that the wife had in that matter were equal to the personal rights that the third party had from his agreement of sale with the respondent/husband. It is worth noting that in that case, no transfer of the property had been effected in favour of the third party when the wife/applicant approached the court for relief. The facts of that matter are therefore distinguishable from the facts in this matter. The competition in that case was between two equal rights. The applicant wife and the respondent /purchaser had personal rights against the respondent/husband and on a balance of equities, the applicant succeeded.

In *Chapeyama v Chapeyama* (supra) the suit was between the former spouses and in my view, GOWORA J correctly held that as between the two of them the wife had breached the terms of the divorce order in having transfer registered in her favour before first affording her former husband the right to purchase her out. She therefore ordered the two parties to proceed in terms of the divorce order.

In any event, the above two cases were each instituted by the wives to protect their rights in the properties in question. The causes of action in both cases were different and called for different considerations. As indicated above, the applicant in this matter is bringing a *rei vindicatio*. The considerations that I have to take into account when dealing with this specific cause of action are different from the considerations that arose in the above cases. Such is the law.

Finally, the defendant has raised issues with the manner in which the property was disposed of in terms of the divorce order. She alleges that the terms of the consent paper, incorporated into the divorce were violated to her prejudice.

Two issues arise here. Firstly, the divorce order is only a judgment *in rem* as far as it regulates the status of the former spouses. When it deals with the distribution of the matrimonial estate, it becomes a judgment *inter partes* and is only binding as between the parties. It creates personal rights in favour of the divorcing parties and where it is violated, the injured former spouse can seek recourse against the other former spouse. The injured party cannot seek recourse against the world at large for an injury occasioned by a judgment that is personal.

Secondly, the rights to property in the matrimonial estate that a divorcing party is afforded by the divorce order are founded on principles of equity as provided for in section 7 of the Matrimonial Causes Act, [Chapter 5.13]. Such rights, even if granted by a court order, are not rights *in rem*. Where a spouse has been awarded a share in the matrimonial estate by a court order, until that share is transferred to them, no rights of ownership are created in favour of that spouse by the mere issuance of the divorce order. At best, the court order serves as a declarator of the respective rights that the former spouses have in the property.

It has been the position in this jurisdiction that the rights that a wife has against her husband in terms of family law are personal against her husband and do not enter the realm of property law to clog the rights of an owner.

The chasm between family law considerations and property law considerations has been the subject of many debates in this jurisdiction. This court is getting hoarse from bemoaning the injustice that this chasm has wrought on wives and from imploring the legislature to redress the injustice by enacting appropriate legislation. The situation has not yet been addressed and many wives in the position of the defendant will have to wait a while longer for redress and justice. (See *Muswere v Makanza* HH16/05 and *P.M. Semwayo and Another v C Chitara and Another* HH48/07).

In *casu* and for my purposes, it is not therefore material for me to determine whether or not the property was sold strictly in terms of the divorce order. Even if the defendant is correct and I find that the property was not sold strictly in accordance with the provisions of the court order, that finding will not assist the defendant's case. She cannot raise a defence from the principles of the law of husband and wife to defeat a *rei vindicatio* at the instance of a third party.

On the basis of the foregoing, the plaintiff's claim must succeed.

Regarding costs, I will not make an order of costs against the defendant for the reason that she was assisted by the Legal Aid Directorate in terms of the Legal Aid Act [Chapter 7:16].

In the result, I make the following order:

1. The defendant and all those occupying through her are to give vacant possession of the property called stand number 491 Mount Pleasant Township 13 of Lot 33 Mount Pleasant to the plaintiff within 30 days of this order failing which the Deputy Sheriff is hereby authorised to evict the defendant and all those occupying through her from the property and give vacant possession to the plaintiff.
2. Each party shall bear its own costs.

Ziumbe & Mtambanengwe, plaintiff's legal practitioners.

Legal Aid Directorate, defendant's legal practitioners.