

BERNARD MUFOKOZANA  
versus  
MARGRET MUFOKOZANA (NEE MASAWI)

HIGH COURT OF ZIMBABWE  
UCHENA J

HARARE, 11, 13, November 2013, 21, 22, 23, 28, January,  
12, 13, 17, 18, February, 7, 8, April, 19, 20, 21, 22, May,  
26, June, 28, 29, July, 8 September, and 20 November 2014.

### **Civil Trial**

*L. Zinyengere*, for the plaintiff.  
*Miss N. P. Munangati Manongwa*, for the defendant  
*Mrs R. Gasa*, for the defendant

UCHENA J: The plaintiff is the defendant's husband. They initially married each other customarily in February 1998, but subsequently upgraded their marriage in terms of the Marriages Act [*Cap 5:11*] on 2 July 2008. They were blessed with four children, Tatenda and Tapiwa Mufokozana (twins) born on 19 December 1998, Bernard Tanaka Mufokozana born on 26 May 2002 and Takunda Mufokozana born on 2 September 2008. Their marriage has irretrievably broken down leading to these divorce proceedings in which the plaintiff seeks a decree of divorce and the following ancillary relief.

1. That the children's custody be awarded to the defendant subject to his being granted reasonable access.
2. An order that the plaintiff pays maintenance for the defendant and the children in the sum of \$300-00 per month.
3. An order awarding House No 2025 Dulibadzimu, Beitbridge to the minor children.
4. An order awarding the Toyota Corona AAA 1980, Mazda B2500 AAG 3795, Mazda Bongo ABB 3450, Refrigerators, stove, lounge suite, 4 beds, television, DVD player, radio, carpet and kitchen utensils to defendant as her share of the matrimonial property.
5. That there be no order as to costs.

The defendant opposed the plaintiff's claim and counter claimed as follows;

1. A decree of divorce
2. Custody of the four minor children.
3. Maintenance in the sum of \$200-00 per month per child and \$400-00 per month for herself until she dies or re marries.
4. Sharing of their matrimonial property as follows; **For the plaintiff** 2 industrial stands, House No 1177 Medium Density, Buses ABJ- 1017 and AQBJ-1018, ABJ 1018 International (Blue) Horse, DAF (Green) horse, DAF Horse with trailer AAZ 9737, 60% share In Evolution Tours (PVT) LTD. For the Defendant, Shop No 1045 Medium Density, All stocks in hand at Shop NO. 1045 Medium Density, Toyota Corona AAA 1980, Mazda B2500 AAG 3750, alternatively its value of \$5000-00, Mazda Bongo AQBB 3450, Toyota Cavalier, ERF (Blue) horse with container AAZ 9738, ERF (Blue) horse with a tent container, 40% share value in Evolution Tours (PVT) LTD, 2 x refrigerators, stove, lounge suite, 4 x beds, television, DVD player, Radio, Carpet, and kitchen utensils.
5. Costs of suit.

The parties held a pre-trial conference after which the case was referred to trial on the following issues;

1. Maintenance on (a) Quantum of maintenance to be paid per month per child (b) Whether or not the plaintiff should maintain the defendant, after divorce and if so at what rate per month.
2. Matrimonial property (a) What constitutes matrimonial property, and (b) the equitable distribution, of the matrimonial property.

At the pre-trial conference the parties agreed on the following;

1. That their marriage had irretrievably broken down.
2. That custody of the four minor children be awarded to the defendant and that the plaintiff be granted access to them as follows; For the twins and Bernard during one week of every school holiday and For Takunda for four hours a day on any Saturday or Sunday per month in the company of the maid after prior arrangement.

The issues referred to trial are not many, but involved a lot of documental and oral evidence, which led to the trial going on and on, as the defendant tried to establish the existence of several assets which the plaintiff was disputing. They haggled over the existence of houses, shops, buses, trucks and motor vehicles. The evidence included the tracking of

assets allegedly bought from third parties, or maliciously transferred by the plaintiff to third parties. After all the evidence had been led the parties made the following concessions in their written addresses.

1. That the issue, of the children's, and the defendant's maintenance, had been determined by the Magistrate's Court and the parties' were going to be governed by that order.
2. That House No 2025 Dilibadzimu was going to be transferred to the parties' children in equal shares and the defendant was to be awarded a life usufruct over it.
3. That the defendant was to be awarded the following; Toyota Corona, Mazda Bongo (Which must be handed over to the defendant in good working order) and Household goods.

In her written address Mrs *Gasa* for the defendant confirmed that the defendant had abandoned her claim to two alleged industrial stands 1757 and 1758. She also said the plaintiff can have Buses ABJ1017 and 1018. She also said the plaintiff can continue to stay at house No 1177 Medium density, which the plaintiff said does not belong to them but to a third party. Mrs *Gasa* confirmed that the defendant is not claiming that property.

The parties made further concessions when they appeared in court for the clarification of their written addresses. The plaintiff who had in his address said the Mazda Bongo was in good working condition agreed to deliver it to the defendant in that condition. The defendant who in her written address wanted the Mazda Bongo to be delivered to her in a perfect working condition agreed that it can be delivered to her in good working condition.

On stand 1045 Mrs *Gasa* for the respondent conceded that it is not matrimonial property as it is registered in the name of Cephaz Nhliziyo. She conceded that the owner should have been joined as a party, or should have been called to prove that he sold the stand to the plaintiff and the defendant. Mrs *Gasa* in fact informed the court that Mr Nhliziyo came to court but she decided not to call him. The concession was properly made as parties cannot share a property registered in the name of a third party without joining him as a party or calling him to testify and prove that he passed ownership to the plaintiff or the defendant.

Mrs *Gasa* further conceded that the defendant's claim for an ERF Truck AAZ 9738, cannot succeed because it was bought from the proceeds of an illegal cigarettes smuggling business.

The only issue which remained unresolved is the distribution of the Mazda B2500. The plaintiff initially offered this motor vehicle to the defendant. He later changed his mind and amended his plea in which he now wanted it for himself so that he can use it to raise money to pay maintenance,. The defendant insisted that it should be awarded to her. She testified that the plaintiff has sold the motor vehicle to AFM Beitbridge church. She called Pastor Maposa who testified that the plaintiff sold the motor vehicle to the church for US\$4 500-00. She had herself testified that she saw the motor vehicle being driven by a stranger whom she followed to a house where it was driven. She inquired as to how the driver Pastor Maposa was driving the motor vehicle. He told her that his church had bought it from Bernard Mufokozana the plaintiff for US\$4 500-00.

The plaintiff in his evidence said he had given the motor vehicle to the church as security for a loan he got from it. He said the loan was negotiated through Mr Chimbara a member of the AFM church. Mr Zinyengere submitted that Pastor Maposa's evidence should not be relied on because he did not produce a resolution authorising him to testify on behalf of the church. Mrs *Gasa* submitted that there is no need for a witness to be authorised to testify because section 4 of the Civil Evidence Act [*Cap 8:01*] provides that;

“Except as otherwise provided in this Act or any other enactment, every person shall be competent to give evidence in any civil proceedings.”

A reading of the Act reveals that the exceptions mentioned in ss 5 to 10 do not include a requirement that a witness testifying about a transaction involving any institution requires a resolution from that institution to enable him to do so. Mr Zinyengere as indicated by the cases he relied on must be labouring under the mistaken view that Pastor Siphon Maposa is representing the church when he is merely testifying about an incident he witnessed which involves the church. The church is not a party to the dispute between the plaintiff and the defendant. The Pastor is merely testifying on how the church ended up in possession of the Mazda B2500. He is entitled to testify without a resolution from the church.

The evidence of Pastor Maposa confirms that the church bought the motor vehicle from the plaintiff. The plaintiff does not dispute receiving money from the church. His allegation that he gave the motor vehicle as security for a loan was disputed by Pastor Maposa. The plaintiff's failure to call Chimbara whom he alleges negotiated the loan for him betrays lack of confidence in his own story. I am satisfied that the plaintiff sold the motor vehicle to AFM church. His claim that he wants that motor vehicle to enable him to raise money for maintenance is false. He changed his mind on its being awarded to the defendant

on realising that he had sold it and was no longer able to deliver it to her. He persists in the false story about a loan to avoid having to pay its value to the defendant. The defendant's amended claim of US\$4500-00 being the value of the Mazda B 2500 must be granted.

The defendant is entitled to costs of suit as she is a house wife who has no means besides the maintenance she was granted by Beitbridge Magistrate's court.

In the result I make the following order;

1. That a decree of divorce be and is hereby granted.
2. That custody of the four minor children Tatenda and Tapiwa Mufokozana (twins) born on 19 December 1998, Bernard Tanaka Mufokozana born on 26 May 2002 and Takunda Mufokozana born on 2 September 2008, be awarded to the defendant and that the plaintiff be granted access to them as follows; For the twins and Bernard during one week of every school holiday and for Takunda for four hours a day on any Saturday or Sunday per month in the company of the maid after prior arrangement.
3. That the issue, of the children's, and defendant's maintenance, be governed by the order granted by Beitbridge Magistrate's Court.
4. That House No 2025 Dilibadzimu be transferred to the parties' four children in equal shares and that, the defendant be and is hereby granted a life usufruct over it.
5. That the defendant be awarded the following; Toyota Corona, Mazda Bongo (Which must be handed over to the defendant in good working order) and Household goods.
6. The plaintiff shall pay the sum of US\$4 500-00 to the defendant being the value of the Mazda B 2500.
7. The plaintiff shall pay the defendant's costs.

*Zinyengere Rupapa*, plaintiff's legal practitioners  
*Gasa Nyamadzawo & Partners*, defendant's legal practitioners