

ANDREW WUTAWUNASHE  
versus  
RUTENDO FAITH WUTAWUNASHE

HIGH COURT OF ZIMBABWE  
MUREMBA J  
HARARE, 15-16 March 2018; 22-23 May 2018 & 6 December 2018

**Civil trial**

*T. Mudambanuki*, for the plaintiff  
*F. Mahere*, for the defendant

MUREMBA J: The parties were married on 7 June 1980 in terms of the African Marriages Act [*Chapter 238*] and then in terms of the Marriage Act [*Chapter 5:11*] on 7 June 2000. Six children were born out of the marriage and are now all majors.

After having been together for close to 36 years and on 1 February 2016, the plaintiff sued for divorce. He averred that the parties had acquired four immovable properties and offered that the defendant be awarded three of them, namely: the Greystone Park property, Harare; the Teten Hall flat, Harare and the Fife Avenue Medical Centre Surgery, Harare. He proposed that he be awarded 89 Cheltenham Drive Park in Ruwa. The defendant initially opposed the divorce in her plea. She went on to file a counter claim wherein she claimed lump sum maintenance in the sum of US\$200 000 or alternatively monthly maintenance of US\$5 000 towards her upkeep, until she dies or remarries whichever occurs first in the event of a decree of divorce being granted. The defendant averred that during the subsistence of their marriage they had amassed a considerable number of immovable properties much more than the plaintiff mentioned in his declaration. She averred that some were purchased in the name of the Ministry of Family of God Church to which they are both founders and preachers. She averred that the plaintiff, the church members and herself built the Ministry together over the years and as such these immovable properties should be considered as part of the parties' assets which are subject to distribution in terms of the Matrimonial Causes Act [*Chapter 5:13*]. She averred that the properties are registered under The Trustees of Andrew

Wutawunashe World Witness and/or the Family of God Churches (the trust) and they should be deemed to form part of the plaintiff's assets because the trust is his alter ego. The assets are ostensibly owned by the plaintiff. The plaintiff has the power and ability to use those assets for his sole benefit. For the descriptions of these properties, the defendant filed an amendment to her claim in reconvention which the plaintiff consented to. The defendant went on to make a prayer that the immovable properties be distributed as per schedule 'A' which she attached to her counter claim. Over and above the immovable properties the parties agreed she should be awarded at the pre-trial conference, she wants the immovable property distributed as follows:

Plaintiff

- The rural home in Gutu
- Waterfalls Paddock, Marondera.
- Rusape property
- Masvingo Church property

Defendant

- No. 36 Adylinn Road, Marlborough, Harare
- No 41 Lavenham Drive East, Bluffhil, Harare
- No 8 Sherwood Gate, 110 Rivonia Road, Sandton Johannesburg
- Glenforest, Harare property
- East 24, Samora Machel Avenue, Harare
- Rutendo Hall, Chegutu
- Bulawayo property
- Masvingo Residential property

The defendant further indicated that she wants No. 2 Mushore Flats, Kambuzuma, Harare to be sold and proceeds be used to improve the Kambuzuma Family of God Church.

In his pleas to the counter claim and the amendment to the counter-claim, the plaintiff disputed that the defendant is a co-founder of the Family of God Church. The plaintiff averred that the defendant is not entitled to any maintenance at all as she is a qualified medical practitioner and she is able bodied. She qualifies to sit in various boards and runs an International Precious Stones Ministry of Girls and Women where she gets some handsome income. He averred that the defendant has the means whereas he survives on a pittance from

church members. He stated that he cannot afford to pay any maintenance, be it monthly or a lump sum.

The plaintiff averred that most of the immovable properties that the defendant is claiming are exclusive church properties which do not form part of the matrimonial assets. He further averred that the church or the ministry which is a *universitas* has nothing to do with the divorce. He further averred that there is a misjoinder of the Trust which is the Trustees for Andrew Wutawunashe World Witness or the Family of God Church or the Ministry which is a *Universitas personum* with a separate legal standing and separate property rights from him. The plaintiff averred that the Trust was registered for the benefit of the church and all the assets were acquired for the benefit of the church as more fully appears from the constitution of the church. He averred that these properties being the properties of the Trust which is a third party cannot form part of the matrimonial estate. The plaintiff stated that of the property mentioned by the defendant:

- No. 36 Adylinn Road, Marlborough belongs to Rev Mawarire and it is in his name.
- No. 41 Lavenham Drive East, Bluff Hill belongs to Erasmus and Tsitsi Wutawunashe and there is a deed of sale signed by both of them (plaintiff and defendant) and Erasmus & Tsistsi Wutawunashe on 15 January 1995.
- The rural home in Gutu is a homestead for the Wutawunashe clan and cannot to be distributed in the divorce.

At the pre-trial conference which was held on 21 June 2017, the defendant changed her mind about the divorce. The parties were able to agree on a number of issues. They agreed that:

- “(a) The marriage has irretrievably broken down.
- (b) Each party is to retain movable assets in his or her possession.
- (c) Apart from the immovable properties declared in this matter neither party owns any other immovable property. If a party has not declared any immovable property registered in his or her name, such a property shall be upon discovery thereof automatically distributable on a 50% (plaintiff) /50 % (defendant) without the need of the innocent party leading any evidence.
- (d) The defendant has been given all the three properties which are registered in both plaintiff’s and defendant’s names which are namely:
  - (i) No. 89 Cheltenham Drive Park, Ruwa

- (ii) Teten Hall Flat under Title Deed 10003/88; and
- (iii) Five Avenue Medical Centre Surgery under Title Deed 2095/90.

The following issues were agreed upon as the issues for trial.

- (1) Whether the Trustees for Andrew Wutawunashe World Witness and Family of God Church are plaintiff's alter egos.
- (2) Whether the property registered in the names of the Trustees of Andrew Wutawunashe World Witness and Family of God Church constitutes matrimonial property for the purposes of distribution in terms of s 7 of the Matrimonial Causes Act [*Chapter 5:13*].
- (3) If so, what is the fair and equitable distribution of the said properties?
- (4) Whether the defendant is entitled to post divorce maintenance, if so what is the quantum and duration?

#### *The plaintiff's evidence*

The plaintiff led evidence from three witnesses. He was the first witness and his evidence was as follows. The church was founded in 1980. It is an International Organisation which spans from Zimbabwe as the headquarters to other countries throughout the world. The church has a constitution which governs it. The plaintiff is the founder and overseer of the church. Should he pass on or should he cease to be the overseer, the church continues because it has perpetual succession. Any other person can succeed him as an overseer. The church has powers to enter into transactions, hold and dispose of property. It has a Board of Trustees known as the Trustees of the Andrew Wutawunashe World Witness which consist of 3 members at a time who are appointed by the overseer. The Trustees officially hold the property on behalf of the church in terms of Article E1 of the Constitution. The Board of Trustees is responsible for purchasing or disposing of church property and in doing so it signs the necessary documents. The church is not an alter ego of the plaintiff. The church is a religious denomination and it is not one person with the plaintiff as it is not a cult. It is a religious organisation with public membership throughout the world. The majority of the properties the defendant listed are church buildings where public church meetings are held. There is a bible school and there are houses which are used for occupation by current or serving pastors. The plaintiff, defendant or their family have never benefitted from the use of those properties in private capacity. These properties were purchased by the church using money from donations made by church members.

The plaintiff said that he cannot in his personal capacity give away the church properties or subject them to use other than the purpose of the organisation. He said that at one time the defendant was a trustee. She stepped down upon being appointed to the Zimbabwe Anti-Corruption Commission.

The plaintiff said that there is no property of their own which the parties purchased in the name of the Ministry. There was never a time when the parties sat down with the church members and agreed to purchase the parties' property. When there were purchases of property, members were told that the purchases were for the church. The plaintiff said that the church buildings are where people are supposed to worship. The church is neither a profit making organisation nor is it a company where people hold shares. He said that he is not the face of the church. It has many representatives worldwide. The church cannot be run as a personal entity. The constitution does not allow the plaintiff to do as he pleases with the church property. The church was founded as a public organisation after plaintiff had received a calling from God well before he knew the defendant. He gathered people and shared his vision. Together with these people and the defendant, the plaintiff started the church. All these people made sacrifices and paid contributions to start the church. The church was formed according to the laws of this country. It is not legal for him to grant to the defendant property that belongs to the church.

On maintenance the plaintiff said that during their marriage they built Five Avenue Medical Centre for the defendant to do her medical practice there. She is a medical practitioner. The plaintiff said that he has granted that surgery to her so that she can continue to use it to generate income for herself. Teten Hall flat was specifically purchased to generate income and it has been granted to her. The plaintiff said that having granted the defendant these properties, he cannot pay her maintenance. He said that he has no fixed source of income from which to provide further maintenance. His work in the church ministry involves benefit when people choose to give him something. He said that he has given the defendant all the properties the parties acquired together. Over and above that she is keeping no. 42 Stratford Drive, Greystone Park a property which she acquired when she was with the Zimbabwe Anti-Corruption Commission (ZACC). She is also getting no. 89 Cheltenham Drive, Ruwa which is an 18 Acre property with a macadamia nut plantation with a great residence of great value. This was their matrimonial home. The plaintiff said that he had done his best to give her what he can. He has no ability to give her regular maintenance that she is asking for.

The plaintiff said that for church property to be purchased or disposed of, a minute of the board of Trustees has to be produced giving such authority. Then two trustees are authorised to sign or if not available, two officials of the organization specifically authorised by the minute to sign then sign. She gave an example of the purchase document on p 12 of exhibit 2 (plaintiff's bundle of documents) which was signed by the defendant when she was still a trustee together with another trustee, Dr Mushosho. The plaintiff said that the properties the parties acquired for themselves were registered in the defendant's name or plaintiff's name or both their names, and there is no property which the plaintiff, the church and the defendant purchased or have rights together.

In respect of Stand 659 Ruwa Title Deed No. 3439/15 which the parties jointly purchased and own, the plaintiff said that they agreed to give it to their daughter Takudzwa Daisy and it is in the process of being transferred by lawyers. He said that the defendant even signed for it at the lawyers, but if she now wants it she can take it.

In respect of Stand 453 Bluff Hill Title Deed no. 5698/82 a property which the parties jointly acquired, the plaintiff said that they sold it to the plaintiff's brother Erasmus and wife Tsitsi Wutawunashe who paid them money which they used to top up the purchase price of no. 89 Cheltenham Drive Park, Ruwa. The parties signed a deed of sale on 15 January 1995 with Erasmus and Tsitsi Wutawunashe.

He denied owning 8 Sherwood Gate, Sandton, Johannesburg, South Africa which he said is owned by one Dr Majachani.

The plaintiff said that there are several properties outside Zimbabwe that are owned by the church. He said that the rest of the property listed by the defendant belongs to the church and he cannot dispose of it.

Under cross examination the plaintiff said that Rutendo Hall in Chegutu is church property which was named in honour of the defendant by a local pastor there. Just like everybody else in the church, the plaintiff made contributions towards the building of the hall. He said that Local Church Advisory Boards form part of the Ministry. These local boards run the various churches. He approves appointments to these Local Church Advisory Boards. There are District Advisory Boards which he also appoints. The plaintiff assigns district and local pastors. There is also the Central Advisory Board and he heads it but he is not the Chairperson thereof. It is this Board that advises the overseer. It assists the overseer in chatting the Ministry. It is the supreme decision making board of the Ministry. He admitted that he appoints all pastors, elders and deacons. He said that he holds the final discretion in

all matters pertaining the Ministry. He said that he has the power to control how the church funds are administered within the confines of the law. He said that the Ministry of Justice Legal and Parliamentary Affairs gave guidelines that church funds are not run as personal belongings but in trust on behalf of the church and this is what the church follows. The plaintiff admitted that he has the sole signing powers on the local church and Ministry bank accounts as per Article D6 (10) of the constitution. He said that the constitution is the only document which governs how the Ministry is run. The plaintiff admitted that the constitution does not say how the Board of Trustees is appointed but it is inferred that appointments are done by the overseer just like how other appointments are done. He said that no term limit is provided for, for the tenure of the Board of Trustees. He admitted that he also has the power to remove trustees. He did not dispute that the constitution does not make a requirement for the Board of Trustees to meet, but he said that it is impossible for the Board of Trustees to buy properties and do transactions without meeting. He said that the Trustees act on his instructions after due process of consultations has been done. He denied that the trustees do not hold meetings. He admitted that he decides in all matters pertaining the church, but he said that he does so in consultation with the Central Advisory Board. He denied that the Board of Trustees is his alter ego.

The plaintiff said no money came from the church towards the purchase of the parties' matrimonial property in Ruwa – no. 89 Cheltenham Park Drive. He said that they bought the Bluff Hill property through a mortgage bond from CABS. They got assistance from the church to pay off the mortgage bond after due authorization. It was put to him that he is the church and he denied it. He said that for this reason there are title deeds that are in the name of the church. It was put to the plaintiff that the Bluff Hill property was never paid for by Erasmus and Tsitsi Wutawunashe hence no transfer of title had been effected. He denied it saying that full payment was made hence he and the defendant signed the deed of sale. He said it was up to the purchasers to transfer title. The plaintiff said that having given away all the property under his power to the defendant, he has no reason to lie that the Bluff Hill property was sold when it was not. The plaintiff said that he cannot give away properties that are registered in the name of the Board of Trustees because this is church property. It belongs to the FOG Church which is not a party to the divorce proceedings. He however, admitted that the defendant contributed immensely together with 30 other people in the foundation of the church. She was a practicing doctor then.

The plaintiff said that the defendant pioneered her own ministry long after the FOG church had started. It is called Precious Stones Ministry and it is meant to uplift girls and women. It does not fall under the FOG church control or supervision. It has its own integrity. It is not a church but it used to use FOG church properties for its activities. When it was put to him that it is only fair that the defendant is allocated a portion of church properties so that she can continue with her own ministry, the plaintiff said that there is no context of allocating her church property in divorce proceedings that are between the two of them. He said that no church property can be donated in the name of these divorce proceedings. He said that any request for a donation of church property by Precious Stones Ministry should be directed to the Board of Trustees and not to him as an individual.

Under re-examination the defendant said that he is not an alter ego of the church because an alter ego means that the church is his front, which is not correct because the church has many members worldwide. It is not a business with shares for profit. The church is built for worship and not to benefit a private individual.

Nehemiah Chingombe testified as follows. He is the Chairman of the Central Advisory Board which oversees the Board of Trustees. He is one of the Trustees. The trustees are the guardians or keepers of the church properties. The Board of Trustees with the authority of the Central Advisory Board makes decisions to buy or sell property in the name of the Andrew Wutawunashe World Witness. No property of the church is in the name of the plaintiff. There is no provision in the constitution which allows for the church properties to be awarded to the plaintiff. The property of the church belongs to the church. There is no individual who can claim the property of the church. Even if the plaintiff dies, the church will continue to exist. The church and the plaintiff are two different persons. The church is an entity that is led by the plaintiff. All the church properties were bought through the contributions made by the members of the church. No one can claim a superior right over the property.

Under cross examination he said the following. He has been a trustee since 2009. He was appointed by the plaintiff on the recommendation of the church. There are two other trustees: Pastor Chaumongwe and Shuvai Wutawunashe. He said that before properties are purchased meetings are conducted by the trustees. He admitted that all properties in issue were purchased prior to him being appointed a trustee in 2009. However, he was a member of the church. He said that when he became a trustee, he became privy to the records of the church. He said that more than 300 church assemblies are under the Ministry of Andrew

Wutawunashe World Witness, from Britain to Australia and from Southern Africa to South Sudan.

Pastor Harison Manasa testified as follows. He is a pastor stationed at Kambuzuma. The second daughter of the plaintiff and the defendant, one Takudzwa gave birth to a child. She asked the witness to come and drive her to Gutu to see her grandfather. He went to collect her from 89 Cheltenham Park Drive, Ruwa where the defendant stays. He found the defendant at home and they had time to converse. She told him about the divorce. She said that she was deeply hurt by the divorce. She said that after she had demanded compensation, maintenance and property from the plaintiff she observed that he was not moved, disturbed or hurt by it. She said that she decided to make a counter claim for church property so that he may be hurt and stop the divorce. After she had finished talking, she prayed for him and he left. All he said was challenged or disputed during cross examination.

*The defendant's evidence*

The defendant's evidence was as follows. From 1981 to 1984 she was employed as a medical doctor in the Ministry of Health and she used all her salary for the benefit of the family. After 1984 she gave up working in government and went into private medical practice because work in the hospitals clashed with her call in the church ministry. She continued in private medical practice until 2005 when she was appointed vice-chairperson of the Zimbabwe Anti-Corruption Commission. She was with the Commission for 6 years drawing a salary. At home she had 6 children to take care of and she was doing all the housekeeping chores. In church she was an active giver and contributed significantly giving large sums into the building fund. On 2 May 1990 whilst in North Carolina on a ministerial visit together with the plaintiff, the defendant received word from God to start the Precious Stones Ministry. The word was about the value and potential of women. With the blessings of the plaintiff, the defendant started the Precious Stones Ministry as a women's department in the FOG Church in 1992. However, on 2 June 2016, at Kambuzuma church, the local pastor Comfort Wutawunashe read a letter in church in the presence of the defendant. The letter was to the effect that Precious Stones Ministry was no longer part of the FOG Church but an independent ministry under Dr R.F Wutawunashe, the defendant. Before this announcement the Precious Stones Ministry used to use FOG church facilities wherever the defendant travelled to minister to girls and women. After being cut off in June 2016, the Precious Stone Ministry was not given a place from which to operate. It was said that the

ministry was being used to criticise the plaintiff. The defendant said that it was probably because she had once given an interview to the Sunday Mail about the divorce. The defendant said that she is no longer attending FOG church because of a barrage of criticisms she was receiving during the church services.

The defendant said that before 2016 the family was sustained using church funds that came as tithes and offerings from believers. Groceries and trips were done and catered for from the church office. They travelled comfortably in the business class. The defendant's motor vehicle was under the Ministry's fleet. It would be serviced and fuelled. There were guards at home, that service was withdrawn. There were people that were working in the garden, their salaries stopped coming and they left employment. The defendant said that benefits and services were cut off without notice. She said that she is requesting for maintenance as part of the divorce settlement because she is no longer employed and she is no longer in medical practice. In respect of Tetenhall Flat which the defendant says she purchased by herself, she said she has tenants from whom she gets \$250-00 per month less 15% of the estate agent's fees. She has no other source of income. Her standard of life is now very different. She now travels economy. She now has to worry about groceries. The house which used to be maintained by the church is now in serious need of repairs. The grounds which used to be maintained by the church now need her attention to the extent that she now has to do some of the landscaping herself. She used to have a full time house maid but now she has someone who comes once a week to do the cleaning.

The defendant said that the church is the alter ego of the plaintiff because the constitution gives him absolute power with no accountability to anyone. She observed that he makes all the decisions. Prior to 2016 the Central Advisory Board was not active. She knew of no one in the church who was in that Board. There were no appointments to this board and there was no board room. There was indeed a Board of Trustees to which she was once a member together with Mr Jonas Mushosho and Mr Onias Chigavazira. They only met once in 1990 in the defendant's medical rooms in Five Avenue. The meeting was for forming an asset register for the Ministry. After that they never met again.

The defendant said that out of the building fund, properties would be acquired. She did not know who would do that but once in a while she would sign as a trustee on the instructions of the plaintiff. She did not remember a platform where the trustees ever disagreed with the plaintiff. He was never called to account by the Trustees or by the Central Advisory Board. As trustees they never received a financial report about the church's

finances. The trustees had no decision making powers. To the defendant's observations, the plaintiff made all the key decisions in the church.

The defendant said that 89 Cheltenham Park Drive, Ruwa is the matrimonial home which they both raised money to buy. The church members also helped by giving some money. They had intended to sell the Bluff Hill property to raise money but the sale was not effected. This property is still registered in both their names. The plaintiff never informed her that cash had been paid for this house. Erasmus Wutawunashe was a pastor and he could not have been able to buy this property. The defendant said that she used money from medical practice to buy the Tetenhall Flat. The Fife Avenue property is a suite of medical rooms at the Five Avenue Medical Centre where the defendant was conducting her medical practice. Stand 852 Ruwa is a vacant stand which both parties acquired jointly by both making contributions. Although the plaintiff was a full time pastor, he would get money from believers. The Mandara township property was also jointly owned and the plaintiff was at the forefront of its acquisition.

The defendant said that for all the church properties, no meetings were held by the Trustees leading up to the purchase of these properties. There were no consultations amongst the trustees prior to the purchases. There were no minuted resolutions or discussions to lead up to the purchase of these properties. She believes that all the properties were purchased on the instructions of the plaintiff.

As for the Ministry constitution the defendant believes that it was drafted on the instructions of the plaintiff. There was no meeting which was held to decide on the terms and contents of the constitution. In terms of the constitution and in practice the plaintiff was not accountable to anyone. No one could discipline him. If people disagreed with him, some would just leave the church, just like when he announced the divorce to the church in January 2016, quite a number of believers left to form another platform.

The defendant said that she was not familiar with how the plaintiff would exercise his signing powers over the Ministry bank accounts. The trustees do not know. She disputed what pastor Harrison Manasa said she said about claiming the church property to fix the plaintiff. She admitted that he did visit though. She said that the Precious Stones Ministry needs infrastructure and somewhere to operate from. She said that if the plaintiff wants, he can cause transfer of properties to her. She said that on 15 June 2018, the plaintiff's counsel, Mr *Mudambanuki* had actually phoned her with an offer by the plaintiff to transfer a piece of land in Hatfield belonging to Andrew Wutawunashe World Witness to Precious Stones

Ministry. She said she referred him to her lawyers, but her lawyers eventually decided that it was better to settle the matter in court.

The defendant said that she believes that the plaintiff is well able to pay her \$200 000-00 lump sum maintenance or US\$5 000-00 per month because although a big part of the church left, he is still travelling first class, stays in 5 star hotels and drives expensive cars. The defendant said that she does not see the church as a separate organisation distinct from the plaintiff because right from its inception, the church people were not separate from their family. The relationship was very close and they would have up to 50 people for dinner, time and again. Some ministers were trained in the couples' house before the church had a training school in Marondera.

The plaintiff said those that left the church left without any property. The plaintiff remained in charge of the properties.

Under cross examination the defendant said the following. She cannot go back to medical practice now because registration is renewed annually and she has not done so for the past 3 years. Moreover, she is over 60 years now and cannot practice. She admitted that she can rent out the surgery but at the time of trial, she had no tenant in occupation. An estate agent was working on getting a tenant. The defendant said that she is claiming \$5 000/ month or \$200 000 lump sum because she believes that this is what she is worth. She admitted that she has macadamia nuts at the Ruwa property where she is staying and that the nuts are a source of income. When it was put to her that more than  $\frac{3}{4}$  of the givers had left the church, the defendant said that she heard that the plaintiff owns a mine in Bikita, but she had no proof of it. She admitted that Article B3 of the Constitution states that the plaintiff as the overseer may be succeeded meaning that if he dies someone else will take over the reigns as the overseer. She said that she is claiming church property because Precious Stones Ministry forms a major part of the FOG church members and they are the people who helped the church acquire properties. She said that the Precious Stones Ministry came into being on 26 February 1992. She however admitted that all the church properties she was claiming were bought before Precious Stones Ministry came into being. She said that she has a Ministry to build hence her claim. She said Precious Stones Ministry is a registered organisation which needs infrastructure where women and girls can gather and be taught. Asked if she was an alter ego of Precious Stones Ministry now that she was claiming property on its behalf, the defendant said she is not.

Asked where the funds for the acquisition of the church property came from, the defendant said that she believed that it came from the building fund that was set up in the church, but she was not very sure. She admitted that an announcement would be made to the church members about a property that needed to be bought and believers would respond by making donations and properties would be bought. She said that the call for donations was always done openly.

The defendant said that the other reason why she was claiming church property was that she had given up her medical practice. She said that if she had not, she would have built medical institutions and clinics to serve the nation and as such she needs to be compensated. She said that her lawyer had advised her that she could get compensation from the church properties.

The defendant admitted that Erasmus Wutawunashe was once a lecturer at the University of Zimbabwe, but she said that she was never informed when Erasmus paid the purchase price of the Bluff Hill property. She however acknowledged the agreement of sale and her signature thereon. She said that the agreement of sale was not cancelled. She admitted that they had donated the Ruwa stand to their daughter. She denied that after remaining with three properties: the Teten Hall flat; the matrimonial property in Ruwa and the surgery in Fife Avenue she is greedy to demand a share of the church properties and payment of maintenance.

#### *Analysis of evidence*

What is apparent in this case is that whilst the parties got married under the African Marriages Act in 1980, the plaintiff also founded the Andrew Wutawunashe World Witness and the FOG Churches in the same year. It is not in dispute that there is a constitution in place which governs the Ministry and the churches. During the course of the plaintiff's and the defendant's marriage and over the years they amassed properties both in their individual names and jointly. On the other hand, there is property that was acquired by the Ministry over the years and this property was registered in the name of the Ministry's Board of Trustees.

It is common cause that the plaintiff has basically awarded almost all the properties the parties acquired separately and jointly to the defendant. The defendant does not dispute that. Over and above that she wants a share of the church properties on the basis that the Trustees for Andrew Wutawunashe World Witness and Family of God Churches are the

plaintiff's alter egos. The plaintiff disputes it. The question is, are the trustees indeed the plaintiff's alter egos and is the property registered in the names of the trustees subject to distribution between the parties in terms of s 7 of the Matrimonial Causes Act [Chapter 5:13]? Does the property fall under the matrimonial estate of the parties? Can the property be classified as constituting assets of the parties?

The Board of Trustees in question is constituted in terms of the constitution of Andrew Wutawunashe World Witness and FOG Churches, 1984. In terms of Article E (1):

“All immovable properties and assets of the Ministry shall be held in trust by a duly appointed Board of Trustees.”

This provision means that the Board of Trustees holds church property in trust for the benefit of the Ministry. The provision also shows that the members of this board are appointed. The provision further shows that the church is entitled to own property. This is even buttressed by Article C 7 (ii) which says:

“The aims of the Ministry are as far as it is deemed in the interests of the Ministry and of the churches under its jurisdiction to purchase, own, sell, hire, alienate or mortgage properties.”

It emerged during trial that in acquiring property the church depended on contributions or donations that were made by the members freely, the defendant included. This is in line with Article D 9 of the constitution which states that:

“The Ministry shall be financed through donations of various funds freely given by members or other independent donors”.

The argument by the defendant that she made significant contributions or donations is immaterial. She was making those donations freely just like any other member. In *Church of the Province of Central Africa v Diocesan Trustees, Harare 2012 (2) ZLR 392 (S)* it was held that by definition a church is a voluntary and unincorporated association of individuals, united on the basis of an agreement to be bound in their relation to each other by certain religious tenets and principles of worship, governance and discipline. It was further held that the existence of a constitution is testimony to the fact that those who are members of the church agree to be bound and to be guided in their behaviour by the provisions of the constitution and the canons made under its authority. In *casu* as a member of the Church, the defendant agreed to be bound by the provisions of the constitution of the church. It is an association she joined voluntarily.

It is the plaintiff's argument that the church is a *universitas* and that as such its property cannot be held to be his. In *Privatisation Agency of Zimbabwe & Anor v*

*Ukubambana Kubatana Investments (Private) Limited & Anor* SC 9/03 the Supreme Court in setting out what are generally accepted as the characteristics of a *universitas* cited the following passage in Herbstein & van Winsen's *The Civil Practice of the Supreme Court of South Africa* 4 ed at p 156:

“A *universitas* is a legal fiction, an aggregation of individuals forming a *persona* or entity having the capacity of acquiring rights and incurring obligations to as great an extent as a human being. The main characteristics of a *universitas* are the capacity to acquire certain rights as apart from the rights of the individuals forming it, and perpetual succession. The right to hold property in its own name is often given as one of its features. (*Webb & Co Ltd v Northern Rifles, Hobson & Sons v Northern Rifles* (1908 TS 462); *Cassim v Molige* (1908 TS 748); and others). If an association of persons possesses these characteristics it is a *universitas*, but if it lacks any, it is not. Thus a body having perpetual succession but no power to hold property apart from its members has been held not to be a ‘*universitas*’ (*Jeschin v Kopuno Sick Benefit and Benevolent Society* 1936 WLD 9).”

The legal nature of an association and whether or not it is a *universitas* is therefore determined by its constitution. *In casu* Articles B (3) and C (7) which spell out the ministry's foundation and aims show that the church is a *universitas*.

Article B3 reads:

“It exists to translate into concrete forms the vision and aspirations; under God, for the betterment of mankind through the Christian faith, envisioned by its Founder and Overseer REV. ANDREW WUTAWUNASHE, and any others who may succeed him.”

Article C reads:

“The aims of the ministry are:-

1. To preach the good news of Jesus Christ in Zimbabwe and beyond.
2. To establish incorporated Local Churches in Zimbabwe and beyond, as the spirit of God may direct. The churches shall be called “FAMILY OF GOD CHURCHES”
3. ....
4. ....
5. ....
6. ....
7. As far as it deemed in the interests of the Ministry and of the Churches under its jurisdiction:-
  - (i) To conclude any transactions.
  - (ii) To purchase, own, sell, hire, alienate or mortgage properties.
  - (iii) To enter into, grant, sign, make or execute all such agreements, contracts, Powers of Attorney, deeds and other instruments that may be deemed expedient or necessary.
  - (iv) To receive, borrow, spend, lend or invest monies, and to open and close banking and other accounts.
  - (v) To institute, conduct, defend, abandon, or compound any lawsuit, action or proceedings instituted by law or against The Ministry.”

As was correctly submitted by Mr *Mudambanuki*, the constitution of the church clearly shows that it is a *universitas*. It has the capacity to own property in its own name, enter into contracts in its own name and it can sue or be sued in its own name. It will continue in existence notwithstanding any changes in membership and it shall continue carrying out the purpose of the founder even if he ceases to be the overseer since it has perpetual succession. In light of this, property held in trust for the church and the ministry remains the property of the church and it must be used for the benefit of the members of the church. That the church is under the general authority of the plaintiff who happens to be the defendant's husband does not make the trustees the alter egos of the plaintiff. In order to pierce or lift the veil, the court looks at the evidence led before it. It is not disputed that the plaintiff is the ultimate decision maker in the ministry and in the church but no evidence was led to show that he treats the church as his alter ego. Evidence led shows that when he and the defendant were acquiring personal assets they would do so in their names and not in the names of the church or the trustees. They would even make financial contributions by themselves. If they wanted assistance from the church they would ask for it and members of the church would voluntarily contribute. Both parties gave evidence to that effect.

On the other hand, when the church was acquiring property, members of the church would make donations freely and property would be acquired and registered in the names of the trustees who are mandated in terms of the constitution to hold such property in trust for the church. Clearly, there was always that separation of the properties between the church property and the couples' or parties' property right from the time the parties got married which coincides with the time the Ministry and the church were founded. No evidence was placed before the court which shows that the plaintiff has ever personally benefitted from any of the church assets. Evidence led shows that the church properties have always been used for the benefit of the church members. The buildings are used as places of worship and the houses are used to house local and current pastors. In piercing or lifting the veil which separates the trust assets from the personal assets of the plaintiff, it can be said that for all practical purposes the church property has always been used for the benefit of the church and the ministry. Over and above this, the terms and objects of the constitution speak not of plaintiff's personal entitlement or benefit, but for the benefit of the church. The plaintiff cannot derive any personal benefit from them.

In view of the foregoing, I make a finding that the trustees of Andrew Wutawunashe World Witness are not the plaintiff's alter egos. As such the properties that are registered in

the names of the trustees do not constitute assets of the spouses for the purpose of distribution in terms of s 7 of the Matrimonial Causes Act.

The argument by the defendant that she is entitled to get some of the church buildings to enable her to continue with her Precious Stones Ministry is misplaced. The present proceedings pertain to divorce and distribution of the assets of the parties. I have already made a finding that the church assets do not form part of the assets of the plaintiff. As such this is not the right forum for the defendant to be making such a claim on behalf of Precious Stones Ministry which is a registered organization. Moreover, she said that she is not its alter ego. It is not even clear in what capacity she is making that claim. Besides, the church is a *universitas*, a legal persona in its own right. It is capable of being sued in its own name in terms of Articles 7(v) of its constitution. For any of its property to be taken away from it, it will need to be sued in its own name so that it can defend the lawsuit by itself.

Since there is no dispute with regards to distribution of assets of the parties, I will award to the defendant the properties the parties agreed upon in their joint pre-trial conference minute. The dispute over Stand 453 Bluff Hill is of no substance anymore because the defendant abandoned her claim for it in her closing submissions. She now wants it awarded to the plaintiff who says it was bought by his brother Erasmus and wife Tsitsi Wutawunashe. Since it is subject to a transaction which has not been cancelled, I will not award it to any one of the parties. The parties will need to finalise that transaction with the purchasers.

Stand 659 Ruwa is not in issue as well since the parties are agreed that they donated it to their daughter Takudzwa Daisy Wutawunashe. The defendant is not claiming it and the plaintiff is not interested in it. I will not therefore award it to any of the parties.

Not much evidence was led in respect of Stand no. 42 Stratford Drive, Greystone Park, Harare which the defendant claims to be the property of the Government of Zimbabwe and not subject to distribution. Although the plaintiff said that it belongs to the defendant, no evidence was led to show that she holds title to this property. I will thus not distribute it. The same applies to the rural home in Gutu which the defendant wanted distributed to the plaintiff. The plaintiff said it is a homestead for the Wutawunashe clan and not subject to distribution. No evidence was led to rebut this. I will not distribute it as well.

*Post-divorce maintenance*

The defendant's claim was a lump sum payment of US\$200 000 or US\$5 000 per month until she either remarries or dies whichever occurs first. However, in the written closing submissions Ms *Mahere* indicated that the plaintiff should be awarded \$3 000 per month for a period of 12 months. The plaintiff's position is that he cannot pay any maintenance because he survives on the goodwill of the church members. He says besides, he has given the defendant almost all the immovable properties from which she can earn income. Moreover, she is a medical practitioner with a surgery, she can go back to medical practice. He contends that she does not even need rehabilitative maintenance.

In terms of section 7 (4) of the Matrimonial Causes Act, in making an order for maintenance the court shall have regard to all the circumstances of the case, including (a) the income-earning capacity, assets and other financial resources which each spouse has or is likely to have in the foreseeable future; (b) the financial needs, obligations and responsibilities which each spouse has or is likely to have in the foreseeable future; (c) the standard of living of the family, and (d) the age and physical and mental condition of each spouse. What this means is that post-divorce maintenance requires justification because marriage is no longer a bread ticket for life. See *Chiomba v Chiomba* 1992 (2) ZLR 197 (SC) wherein it was held that if a young woman gave up work when she got married, she will be awarded short term maintenance to tide her over until she finds a new job. Middle aged women should be given rehabilitative maintenance for a period long enough to enable them to be trained or retrained for a job or profession. Elderly women who are too old to work and are unlikely to remarry will require permanent maintenance. It is clear that the case gives guidelines on how to deal with post-divorce maintenance in respect of spouses who have no source of income and who have been totally dependent on the other spouse.

In *casu* the defendant is a qualified medical practitioner who is aged 61 years old. She said that she is too old to go back to medical practice and her concern is that she has not been in medical practice for some time. Moreover, she has not renewed her registration in the last three years. Although she has been awarded the medical surgery by the plaintiff, she intends to pursue her calling in the Precious Stones Ministry. The plaintiff said that she will be earning an income from this ministry, a point she did not refute. Over and above this, the defendant is going to be awarded properties from which she will earn some income. As it is, she is already getting income from the Teten Hall flat which she is renting out. She is going to be awarded the matrimonial home in Ruwa which is sitting on an 18 acre plot with a garden of macadamia nuts which she admits are another source of income for her. If she does

not use the surgery she can rent it out and earn some income. It is pertinent to note that all these properties have been at her disposal from the time the parties separated in 2005 when the plaintiff went to stay in South Africa which means that she has been benefitting from them. No effort was made to explain how much income she has been getting from these properties including the macadamia nuts over the years.

The biggest challenge that makes it difficult for this court to determine this issue of maintenance is that the defendant gave no breakdown of the amount she is claiming. She did not even justify the initial amounts she was claiming. She did not explain what justified her being given a lump sum amount of \$200 000 or \$5 000 as monthly maintenance for the rest of her life or until she remarried. From nowhere the figure of US\$5 000 per month was reduced to \$3 000 per month for 12 months. No explanation was given for the reduction in the amount and in the period. Besides, the list of her monthly expenditure and income was not given. It is pertinent to note that the parties have been living separately since 2005 with the plaintiff living in South Africa. It was not even explained how the defendant has been surviving all these years. The question is how was she surviving? How will she be spending \$3 000 per month? Of this amount what will be her contribution? She admits that the plaintiff is not on a salary and survives on the benevolence of the church members yet she did not show how the plaintiff will be able to pay the amount she is claiming. Nothing was placed before this court to show how much money he gets per month from the church. It is not enough to simply claim an amount of maintenance without justifying it and without showing that the other party can pay it. The defendant needed to give a breakdown of her monthly expenses and her own income for the court to be able to determine if she really deserves an award of maintenance. This is moreso in view of the fact that the plaintiff says she sits on various boards and earns a handsome income from Precious Stones Ministry.

On the other hand, the plaintiff needed to do the same thing. He needed to be candid with the court by disclosing his list of expenses and the money that he gets from the church. Obviously he gets some money periodically from the church, otherwise how does he survive? The financial circumstances of the parties were not disclosed at all. All they placed before the court was their quarrel and nothing more. I am unable to make a determination on the issue of maintenance on the basis of the evidence the parties placed before me. The plaintiff having been awarded almost all of the parties' immovable properties needed to fully and clearly justify her maintenance claim. I will in the circumstances grant absolution from the instance in respect of this claim.

### *Costs*

Although the defendant did not succeed in her claim for distribution of church property and maintenance, I am not inclined to award costs against her as prayed for by the plaintiff. A lot of benefits she used to enjoy from the church were withdrawn. She has had to make a lot of financial adjustments in her life. Ordering her to pay the plaintiff's costs is likely to put a further strain on her financial situation. I will thus order that each party bears its own costs.

### *Conclusion*

Accordingly, it be and is hereby ordered that:

1. A decree of divorce is granted
2. Each party shall retain as their sole and exclusive property, movable assets in their possession.
3. The defendant is awarded the following immovable properties as her sole and exclusive property:
  - (i) Stand No. 89 Cheltenham Drive Park, Ruwa (*registered in plaintiff's name*)
  - (ii) Share no. 3 in Stand 2663 Salisbury Township of Salisbury Township Lands (Teten Hall Flat under Title Deed 10003/88 *registered in defendant's name*); and
  - (iii) Stand 1319 Salisbury Township (Five Avenue Medical Centre Surgery under Title Deed 2095/90 *registered in both plaintiff's and defendant's names*)
4. Both parties shall meet the costs of transfer of the two properties that are registered in defendant's names: the Ruwa property and the Fife Avenue Medical Centre Surgery equally within 6 months of this order or such longer period as the parties may agree.
  - (i) The plaintiff shall sign the transfer documents for the two properties upon the parties paying the transfer costs.
  - (ii) In the event of the plaintiff failing to sign the requisite transfer documents, the Sheriff is directed to sign the documents to effect transfer of ownership of the two properties to the defendant.

5. If a party has not declared any immovable property registered in his or her name, such a property shall upon discovery thereof be automatically distributable on a 50% (plaintiff) /50 % (defendant) without the need of the innocent party leading any evidence.
6. Absolution from the instance is granted in respect of the defendant's claim for post-divorce maintenance.
7. Each party shall bear its own costs.

*Jarvis Palframan*, plaintiff's legal practitioners  
*Kantor and Immerman*, defendant's legal practitioners