

KATIE PEARCE CHENEY (nee Turner)
versus
RYAN ANTHONY CHENEY

HIGH COURT OF ZIMBABWE
CHIRAWU-MUGOMBA J
HARARE, 6, 7, 29, 30, 31 October and 1 November 2019.

FAMILY LAW COURT - TRIAL

D Ochieng, for the plaintiff
K. E. Kadzere, for the defendant

CHIRAWU-MUGOMBA J: On 7 October 2019, I gave judgment *ex tempore* in this matter. The plaintiff's legal practitioners have requested for the written judgment.

The plaintiff issued summons against the defendant on the 6th of October 2015 seeking a decree of divorce and other ancillary relief. In her summons and declaration she averred that she and the defendant were married at Kariba on the 1st of May 2010 and that the marriage was still in subsistence. There were two minor children of the marriage namely Anthony John Cheney (born on 17 November 2010) and Chloe Ellese Cheney (born on 10 September 2013). She stated that it would be in the best interests of the minor children if she was awarded sole custody and sole guardianship. She stated that the marriage relationship between herself and the defendant had irretrievably broken down with no prospects for the restoration of a normal marriage between the parties. She gave particulars of the breakdown which can be summarised as violence, verbal, emotional and psychological abuse; false allegations of taking drugs, intimidation and defamation. As a consequence, the plaintiff had lost all love and affection for the defendant. She sought maintenance in the sum of US\$1,700 per month per child. She also sought that the defendant be ordered to pay rent at a home she secured for herself and the children. The plaintiff sought to be awarded a list of what she termed movable assets as her sole and exclusive property and that she retains a Mercedes Benz Kompressor vehicle that she alleged was given to her by the defendant as a 30th birthday gift. Lastly she sought an order that each party retains their personal items of property that they owned prior to their marriage.

In his plea, the defendant admitted that the marriage had irretrievably broken down with no prospects of success for the restoration of a normal marriage between the parties. He disputed the reasons advanced by the plaintiff and instead averred that the breakdown was due to infidelity and persistent abuse of intoxicating substances, malicious prosecution of him at the instance of the plaintiff on the basis that he was dealing with drugs and persistent neglect of the children born of the marriage. He denied the reasons for the breakdown as advanced by the plaintiff. He admitted that it would be in the best interests of the minor children if custody was to be awarded to the plaintiff with him exercising what was termed reasonable access. On maintenance for the minor children, the defendant submitted that the existing order for maintenance in the Magistrates Court for \$850 per month should remain operational. In any event, he did not have the means to pay \$1,700 that the plaintiff had claimed. The issues of rent and accommodation were already covered in the Magistrates Court and the plaintiff was precluded from dealing with them. The motor vehicle could not be awarded to the plaintiff as it belonged to Tiger Construction (pvt) Ltd a family owned company. It must therefore be returned to the company. Defendant agreed with the sharing of the movables as proposed by the plaintiff.

Prior to the holding of a pre-trial conference, the defendant sought to amend his plea in case number HC 78-18. The amendment was to the effect that the defendant be awarded custody and guardianship of the minor children and also an award of about 52 movable items. These included an acer laptop, Zara's ashes and belongings, Anthony's desk and shelves, cupcake maker, Anthony's baby book, children's books, passports in safe, 38 Taurus and 22 Remington gun, nebuliser, copy of pictures and videos from laptop, children's toys and presents, Anthony's art and pictures and cot. The application was opposed strenuously by the plaintiff. The court dismissed the application on the 15th of February 2018. The effect of the dismissal was that the admissions stood. For some inexplicable reason, these issues found their way into the joint pre-trial conference minute filed of record on the 6th of August 2018. There was also no explanation of what became of the plaintiff's claim for sole guardianship and custody. The identified issues are as follows:-

- a. What order should be made in respect of the custody of the minor children?
- b. In the event that custody of the minor children be awarded to plaintiff, what is the correct level of maintenance payable to plaintiff by defendant for the said children's living costs, inclusive of rent payable by plaintiff in respect of such house as she and the minor children occupy from time to time?

c. What order should be made in respect of division of property?

The fact of the breakdown of the marriage was admitted by both parties.

The evidence of the plaintiff can be summarised as follows.

At the time of separation between the parties in 2015, she took Chloe the youngest child with her. Anthony followed a week or two later as he had to complete pre-school in Chinhoyi where the parties lived at that time. The children have lived with her since. An order by consent was obtained from the Magistrates Court sitting at Chinhoyi in case number JC7/15. The terms of that order were that the defendant shall have custody of the minor children. Upon Anthony starting grade one, access would be varied from every weekend to alternate weekends. During school holidays the plaintiff and the defendant would each have access during one- half of the school holiday and additionally every alternate public holiday. She stated that the defendant and his girlfriend often shouted words at the minor children. As a result, they are confused and scared of the defendant. The children had been send for therapy. The children also reported that the defendant has no time for them but he spends time with his girlfriend's children. On her part she has played the critical role of being with the children by being there for them. She supervises their school work, she attends school functions and generally the day to day looking after of the children. On the other hand, the defendant has never attended any school function despite being added on the email list of parents. His email address was removed from the parents' list at his instance. The children are performing well in school including while they were at Bryden Country School. The plaintiff produced school and other reports to back up her assertion.

The defendant was paying \$850 as ordered by the Magistrates Court sitting at Harare under case number M2519/15. In addition he was also ordered to pay medical aid. The defendant was largely complying with the order except for payment of medical aid. The plaintiff once worked at Bryden Country School but had since moved to Harare International School to work as an Admissions Officer. The children had also been enrolled at the Harare International School. Their fees was part of the benefits to the plaintiff though a sum of \$US1,000 was deducted from her salary every month. The plaintiff submitted a comprehensive schedule of expenses which she alleged reflected her monthly expenses as well as some receipts. In the summons and declaration she had sought US\$1700 as maintenance but due to changes in the law, she now sought \$21, 660 being the equivalent at the exchange rate prevailing at the date of the hearing. The maintenance payments were

coming from Tiger Construction. She earned a salary of around \$3500 from her job at the Harare International School. She was feeling the financial strain as she was unable to cover the gap. She disputed that Tiger Construction was on the verge of collapse and that the defendant was no-longer a director of the company. Apart from Tiger Construction, the defendant owned residential and commercial buildings in Chinhoyi for which he collected rentals. As a result, the defendant is in a position to pay the maintenance in the sum claimed. The court in terms of R167, ordered the plaintiff to produce her six months bank statement that reflected her salary. The statement showed an average income of \$3 781 per month in later months after an initial figure of around \$822 that appeared for the months of March, May and July 2019.

The plaintiff's testified that the motor vehicle was purchased for her by the defendant as a birthday present. It did not belong to Tiger Construction as claimed by the defendant. In support, she produced exhibit 8 being an email forwarded by one Justice Vlok to her. The email showed pictures of the plaintiff inside the vehicle. The message read as follows, *"Kate's 30th birthday present has arrived exactly 1 month before her big day, so so happy and looking gorgeous. Happy for her."*

On the other hand, the defendant's evidence can be summarised as follows.

Defendant testified that he has a good relationship with his children. He is a person of integrity. He does not drink alcohol. The plaintiff abuses drugs and she used to go out at 3:00am thus leaving the children with unknown persons. She also had several affairs. He submitted that the children are better off with him. He has access to the children for half of the school holiday, alternate weekends and public holidays. When he is with the children, they sometimes go on holidays and they undertake a lot of activities together. The children love the farm environment in Chinhoyi and they seem to get along well with his live-in-girlfriend and her children. He ensures that he complies with the access order. At one point Chloe was malnourished and yet a doctor's report had shown that she was in good health. However, the social worker in Chinhoyi held a contrary view. Under cross examination the defendant conceded that he does not attend the school or extra mural events involving the children. He also does not pay for any of these activities.

Defendant began working at Tiger Construction from 1993 before relocating to England. He returned to Zimbabwe and became the Managing Director of Tiger Construction. In 2015, he was forced out of the company as a director because he had become a liability due to his unresolved issues with the plaintiff. He receives an income of \$800 from

the company and he is also supported by his parents and siblings. He denied owning any building for which he collected rentals. The fleet of cars that the plaintiff alleges are his belong to the company. He was not in a position to pay the amount claimed by the plaintiff as he was barely surviving. He submitted that he is barely managing to pay the \$850. On the other hand, the plaintiff is gainfully employed and is in a much better financial position than his. The holidays that he used to go to with the plaintiff was due to the benevolence of his family and his parents used to own a holiday home in Mozambique.

The motor vehicle was acquired by the company and paid for using company funds. The vehicle should therefore be returned to the company. The defendant denied generating the email – exhibit 8 showing the plaintiff inside the vehicle. The vehicle ended up being in the possession of the plaintiff purely because it was convenient. He had lodged several cases of theft of the motor vehicle against the defendant with the police but no investigation had been conducted. The court ordered the defendant in terms of R167 to produce a copy of the registration book for the vehicle. It showed that the vehicle is registered in the name of the defendant.

Both parties agreed that the marriage between them had irretrievably broken down with no prospects for the restoration of a normal marriage. Accordingly a decree of divorce will be granted.

Although the defendant attempted to –reintroduce his amended plea by claiming certain movable property, his attempt did not go far as he was reminded that this court had already dealt with the issue. HH 78-18 was not appealed against. It remains extant and the court's hands are tied and therefore the issue of sharing of movables is water under the bridge. I pause to comment on the nature of the movables however as listed in annexure "A" to the summons and declaration. The issue that exercised the court's mind was whether or not some of the listed items constitute movable matrimonial assets. The court noted the claim for ashes and belongings of the plaintiff and defendant's child who passed away at six weeks. In *Wilson v Wilson*, 138.So. 3d 1176(2014), the Fourth district of the District Court of Appeal of Florida noting the sensitive nature of the issue held that ashes do not constitute 'property' but are to be treated as a 'body'. Had the amended plea been allowed, the court would have had to make a decision as to whether the ashes constitute matrimonial property and if so who these should go to. The same goes for the belongings. The listed property also included many items belonging to the children. These are light fittings from children's rooms, Anthony's desk and shelves as well as his art and paintings, 'balance of children's clothing, toys and

toiletries etc’, ‘pram from my father’, Anthony’s baby books, children’s books, teddy bears, children’s toys and presents among others. It would have been prudent that the party who is awarded custody should also take possession of these items. Other curious movables listed include cookbooks, passports in safe (it was not specified in whose names and in any event they are state property), documents in safe (not specified), cell phones in safe (not specified whose these belong to), clothing (not specified whose), handbags and accessories, ‘guns given by my grandfather to Ryan need to be returned’, nebuliser, copy of external hard drive, ‘copy of pictures and videos from laptop’ and pictures (unspecified). Legal practitioners ought to guide their clients on what constitutes movable property lest the courts are turned into a battle field over issues that they should not wade into. Allowing parties to spar over such issues detracts from the clean break principle.

In relation to custody however, the court noted that the plaintiff had claimed sole custody and guardianship. There was also in place an order of custody from the Chinhoyi Magistrate Court. The court also took into account the fact that it is the upper guardian of all minor children and had to satisfy itself on custody. The court in addition to the oral evidence also interviewed the two minor children separately in the presence of a third party mutually agreed to by the plaintiff and the defendant in terms of R276. The third party is currently employed at the Harare International School.

In relation to custody, as has been held in a plethora of cases, the best interests of the child is the paramount consideration. This is reinforced by the 2013 constitution in sections 19(1) and 81(2). The best interests of the child standard is not new in the Zimbabwean courts. Even before the promulgation of the 2013 Constitution it was the standard in place regardless of which law applied- see section 5 of the Customary Law and Local Courts Act [*Chapter 7:05*]. The South African Children’s Act number 38/2005 states the best interests of the child standard as follows:-

- 7.Best interests of child standard.**—(1) Whenever a provision of this Act requires the best interests of the child standard to be applied, the following factors must be taken into consideration where relevant, namely—
- (a) the nature of the personal relationship between—
 - (i) the child and the parents, or any specific parent; and
 - (ii) the child and any other care-giver or person relevant in those circumstances;
 - (b) the attitude of the parents, or any specific parent, towards—
 - (i) the child; and
 - (ii) the exercise of parental responsibilities and rights in respect of the child;
 - (c) the capacity of the parents, or any specific parent, or of any other caregiver or person, to provide for the needs of the child, including emotional

and intellectual needs;

(d) the likely effect on the child of any change in the child's circumstances, including the likely effect on the child of any separation from—

(i) both or either of the parents; or

(ii) any brother or sister or other child, or any other care-giver or person, with whom the child has been living;

(e) the practical difficulty and expense of a child having contact with the parents, or any specific parent, and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with the parents, or any specific parent, on a regular basis;

(f) the need for the child—

(i) to remain in the care of his or her parent, family and extended family; and

(ii) to maintain a connection with his or her family, extended family, culture or tradition;

(g) the child's—

(i) age, maturity and stage of development;

(ii) gender;

(iii) background; and

(iv) any other relevant characteristics of the child;

(h) the child's physical and emotional security and his or her intellectual, emotional, social and cultural development;

(i) any disability that a child may have;

(j) any chronic illness from which a child may suffer;

(k) the need for a child to be brought up within a stable family environment and, where this is not possible, in an environment resembling as closely as possible a caring family environment;

(l) the need to protect the child from any physical or psychological harm that may be caused by—

(i) subjecting the child to maltreatment, abuse, neglect, exploitation or degradation or exposing the child to violence or exploitation or other harmful behaviour; or

(ii) exposing the child to maltreatment, abuse, degradation, ill-treatment, violence or harmful behaviour towards another person;

(m) any family violence involving the child or a family member of the child; and

(n) which action or decision would avoid or minimise further legal or administrative proceedings in relation to the child.

(2) In this section "parent" includes any person who has parental responsibilities and rights in respect of a child.

(Date of commencement of s. 7: 1 July, 2007.)

In Zimbabwe, this standard is very fluid with each case being judged on its own merits. The evidence revealed that the plaintiff and the defendant have exhibited acrimony towards each other with reports to the police about each other's alleged transgressions including use and possession of drugs and car theft. One week one party makes a report and the following week the other one makes a report. This does not augur well with the best interests of the children in mind. Nonetheless, in Zimbabwe the most widely adopted

indicators of the best interest of the child were set out in *McMall v McCall* 1994(3) SA 201 at 204-205 as follows:-

- (a) The love, affection or other emotional ties which exist between parent and child and the parent's compatibility with the child
- (b) The capabilities, character and temperament of the parent and the impact thereof on the children's needs and desires.
- (c) The ability of the parent to communicate with the child and the parent's insight into, understanding, and sensitivity to the child's feelings.
- (d) The capacity and disposition of the parent to give the child guidance he requires.
- (e) The ability of the parent to provide for the basic physical needs of the child, the so called "creature of comfort" such as food, clothing, housing and other material needs – generally speaking, the provision of economic security.
- (f) The ability of the parent to provide for the educational well-being and security of the child both religious and secular.
- (g) The ability for the parent to provide for the child's emotional, psychological, cultural and environmental development
- (h) The mental, and physical health and moral fitness of the parent.
- (i) The stability or other wise of the child's existing environment having regard to the desirability of maintaining the *status a quo*
- (j) The desirability or otherwise of keeping siblings together
- (k) The child's preference, if the court is satisfied that in the particular circumstances the child's preference should be taken into consideration.
- (l) The desirability or otherwise of applying the doctrine of same sex matching, particularly here, whether a boy of 12 ... should be placed in the custody of his father and
- (m) Any other factor which is relevant to the particular case with which the court is concerned".

These factors together with the South African Children's Act indicators provide useful guidance in dealing with custody disputes. The Convention on the Rights of the Child also provides useful guidance on the standard. This also finds resonance in the interest theory on children's rights. In *casu*, there is an existing court order from the Chinhoyi Magistrates Court on custody and access. This order was obtained by consent. In my view, custody of the minor children should remain with the plaintiff. The minor children though very young gave a useful insight into their stay with the plaintiff and the defendant. The views of the children was not the only factor. From the evidence led and as confirmed by the children they are well settled in their current school which is located in Harare. The defendant admitted that he is happy with their progress. The school reports produced by the plaintiff were never challenged. The defendant did not give the court any indication as to which school he would want the children to attend if he were awarded custody. He also painted himself as a virtual pauper. He has not been involved in the lives of the children as he confirmed during cross examination in relation to their schooling and extra -curricular activities. The children have been in the custody of the plaintiff since birth except for the very brief period that Anthony

remained in Chinhoyi to complete preschool. Although not wanting to wade into the tender years doctrine, when interviewing the children it was clear that they still require the plaintiff as their mother to keep playing a central role in their young lives. There was no evidence when talking to the children and none was presented by the defendant to show that it is detrimental for the children if they were to remain in the plaintiff's custody. In other words, given the fact that the children have been with the plaintiff as per the court order in JC 7/15, the defendant ought to have led evidence that shows that circumstances have changed that warrant the placing of the children with him and not the plaintiff. It would actually be detrimental for the children to be removed from the environment that they are now used to and taken to Chinhoyi where the defendant lives. He also seemed to be ill-prepared even if he was awarded custody.

Coming to access, it is meant to keep the bond between the minor children and the non-custodial parent alive. It should be exercised in the best interests of the minor children- see *Cruth v Manuel*, 1999(1) 7 (S). Although there were some issues in relation to the children's stay with the defendant in Chinhoyi involving his live-in-girlfriend, these are not in my view serious enough to deny him access. In any event although the plaintiff in her declaration sought sole guardianship and custody, no evidence was led to show that it would not be in the best interests of the children if the defendant is awarded access. The plaintiff is in support of the children maintaining the bond they have with the defendant. The defendant as the father is expected to act in the best interests of the minor children when they are with him given the fact that access is not cast in stone. The order of access as per JC7/15 will be maintained. However the paragraph on reasonable notice will be removed since it is not clear and concise and will leave room for arguments and further litigation between the parties. Harare International School follows a different calendar from the Zimbabwe schools official government one. Therefore the access will be half of the school holiday depending on which school the children are attending in addition to the alternate weekends and alternate public holidays.

With regard to maintenance, in terms of the Maintenance Act [*Chapter 5:09*], there are three main considerations upon which a court makes an award of maintenance. These are in terms of section 6(2) (a-c) – legal liability; ability and failure to pay. The court noted the existence of M2519/15 in terms of which the defendant was ordered to pay \$850 per month for the two minor children with effect from the 30th of June 2015. In addition, the defendant was ordered to pay medical aid and school fees. In passing the court noted the undesirability

for a Magistrates court to lump a maintenance figure together instead of separating the figure since each child turns 18 at different times and they may also have different needs in relation to an upward or downward variation.

Having said that in my view, although the High Court has inherent jurisdiction, it would not be in the best interests of the minor children to make an order based on unsubstantiated evidence. Although the plaintiff gave evidence and furnished the court with detailed lists of expenses and also income and expenditure, she was not very candid with the court. Her bank statement shows that for many months she earned \$822 on average. She also mentioned that she has another bank account. She did not take the court into her confidence on how she is covering the deficit between what she earns and how much she is seeking. She was unable to prove how much the defendant earns every month. If it is her contention that the defendant has extra sources of income, she must prove this lest the court makes an award of maintenance that will turn out to be *in brutum fulmen*. The defendant on the other hand made unsubstantiated claims that he is no longer a Director of Tiger Construction. He stated that he is relying on family members for support. None of the family members gave evidence to support this assertion. He was clearly not also candid with the court. It seemed that the plaintiff and the defendant were intent to make the acrimony between them affect even the welfare of the children. This flies in the face of the best interests of the child standard and pours water on their claims that they have the interests of the children at heart. Clearly the plaintiff and the defendant have what can aptly be termed as baggage between them which has clouded their judgment. As the upper guardian of all minor children, the court frowns upon such conduct as it is in the best interests of the children if the parents are candid with the court. A sound award can only be made on the basis of sound evidence in relation to earnings and expenses.

I agree with the submission on maintenance by Mr *Kadzere* that the evidence placed before the court was not enough to make a finding as to how much should be awarded. It seems that as Zimbabwe, we are not the only ones grappling with lack of evidence on earnings in maintenance matters. The South African jurisdiction has adopted a comprehensive financial disclosure form which constitutes a declaration of earnings – see the consolidated judgment in *E v E, R v R and M v M*, case numbers 12583/17; 20739/18 and 5954/18 of the High Court of South Africa, Gauteng Local Division and a copy of the form annexed to this judgment. Given the nature of our informal economy, it may be prudent for Zimbabwe to devise new methods of ascertaining income. Even the celebrated *Gwachiwa*

formula- see SC-134-86 can only work if there is clear evidence of the total household income. Section 46 (1) (e) behoves the court to consider foreign law and section 176 to develop the common law. The South African form may provide useful guidance in maintenance matters.

In my view, the order of the Magistrates Court in relation to maintenance should remain as is in respect to the amount. However, the figure will be split in half so that each child is awarded \$425. The issue of maintenance is better dealt with at the Magistrate court sitting as a maintenance court. Section 13 of the Maintenance Act gives room for the court to conduct an inquiry. That court is also better placed to deal with issues relating to variation.

Regarding the Mercedes Benz motor there was no evidence placed before the court that it belongs to Tiger Construction as claimed by the defendant. The defendant tried to hide behind the legally correct position that a registration book does not constitute proof of ownership- see *Deputy Sheriff of the High Court v Lameck and others*, HH-269-18. However, no director of shareholder from the company gave evidence in support of defendant's position and claim. There was no explanation as to why it is in defendant's name nor was there evidence that the company paid the duty for it. There was no evidence that the defendant received a refund of duty that he paid. No one from Tiger Construction had ever used the vehicle since its purchase. The plaintiff's version that it was a birthday present is more probable. This is supported by the email exhibit 8 with pictures of the plaintiff driving the vehicle and the email itself with the defendant's name as the sign-off. The court rejects the defendant's assertion that the plaintiff faked an email especially in the absence of proof. In HC 3683/15, a case involving the plaintiff and the defendant, he deposed to an affidavit stating that he bought a car for the plaintiff. The defendant cannot be heard to perform what can only be termed a "volte-face". His claim that the vehicle belongs to Tiger Construction is clearly an after-thought. Having made this finding, the court places the motor vehicle into the category of a gift of a sentimental value that should be awarded to the plaintiff.

Before dealing with the final order, the court noted with dissatisfaction the manner in which this matter was prosecuted by the plaintiff and defendant's erstwhile legal practitioners. The court noted the attempt to drag the name of a sitting President of the country into a purely matrimonial dispute. There was an attempt to drag names of persons who were not before the court into the matter. It is trite that any person named in a pleading in respect of an improper association with a litigant's spouse in a matrimonial matter ought to be served with the pleadings – see generally R273. The court noted the lack of documentary

evidence to support the plaintiff and defendant's versions. The court had to order the plaintiff in terms of R167 to produce her bank statements and the defendant to produce a copy of the registration book for the vehicle. This is despite a long list of 'discovered' documents on the plaintiff's schedule. The defendant especially could have been better served by his erstwhile legal practitioners. The court also noted that the defendant addressed a letter to the registrar dated the 3rd of October 2019. It was copied to the sitting President and other political offices and also to ZACC. The letter makes serious allegations of impropriety that have in my view nothing to do with this matter. It also casts aspersions on persons who are not before the court. Whilst litigants have a constitutional right to be heard, it must be exercised responsibly. In any event, if a party is not satisfied with the outcome of their case in the High court, they have a right to appeal to the Supreme Court.

Regarding costs, none of the parties have been 100% successful. As is trite, costs are at the discretion of the courts. In *casu* an appropriate order will be that each party bears their own costs.

Accordingly, it is ordered as follows:-

1. A decree of divorce be and is hereby granted.
2. (a) Custody of the minor children namely Anthony John Cheney(born on the 17th of November 2010) and Chloe Ellese Cheney (born on the 10th of September 2013) be and is hereby awarded to the plaintiff.

(b) The defendant shall exercise access to the minor children as follows:-
 - i. During the first half of every school holiday depending on which school the children attend.
 - ii. Every alternate weekend with effect from the 7th of October 2019.
 - iii. Every alternate public holiday with effect from the 7th of October 2019.
3. The maintenance order in case number M2519/15 shall remain in operation but with the following variation:-
 - a. The defendant shall pay maintenance in the sum of \$425 per month per child and medical aid until each child turns 18 or becomes self –supporting whichever happens first.
 - b. The order in relation to school fees payment at Busy Little Hands is discharged.

4. The plaintiff be and is hereby awarded the movable property listed in Annexure 'A' to the summons and declaration.
5. (a) The Mercedes Benz C200 Kompressor motor vehicle registration number ADP 4941 be and is hereby awarded to the plaintiff as her sole and exclusive property.

(b) The defendant shall sign the necessary documents to change ownership of the said vehicle into the name of the plaintiff within 30 days from the date of this order.

(c) In the event that the defendant fails, neglects or refuses to sign the necessary documents within the stipulated period, the Sheriff of the High Court be and is hereby authorized to sign such documents to effect change of ownership from the name of the defendant into plaintiff's name.
6. Each party shall bear its own costs.

Atherstone and Cook, plaintiff's legal practitioners

Kadzere, Hungwe and Mandevera, defendant's legal practitioners