

DISTRIBUTABLE (3)

TEEJAY SIBANDA
v
HILDA M SIBANDA

SUPREME COURT OF ZIMBABWE
GWAUNZA JA, GARWE JA & GOWORA JA
BULAWAYO, SEPTEMBER 2, 2013 & FEBRUARY 20, 2014

D Dube, for the appellant

N Mazibisa, for the respondent

GWAUNZA JA: This is an appeal against part of the judgment of the High Court, Bulawayo, handed down on 27 October 2011.

The case was a contested divorce matter in which divorce was sought on the grounds of irretrievable breakdown. The apportionment of some of the parties' matrimonial assets, the divorce itself and the issue of custody of their minor child, were not contested. However, the parties failed to reach agreement on the apportionment of several of their major assets, acquired during their thirteen (13) years of marriage.

In apportioning these assets between the parties, the learned judge *a quo* properly took into account s 7(1) of the Matrimonial Causes [Cap 5:13], as indicated in his judgment at pp 6 to 7, where he quoted the following *dictum*, to be found in the case of *Gonye v Gonye*¹

¹ 1994 (2) ZLR 103 (SC)

² 2007 (1) ZLR 216 (HC)

“It is important to note that a court **has an extremely wide discretion to exercise** regarding the granting of an order for the division, apportionment or redistribution of the assets of the spouses in divorce proceedings. Sec 7(1) of the Act provides that the court may make or order with regard to the division, apportionment or distribution of **the assets of the spouses, including an order that any assets be transferred from one spouse to the other**” (emphasis added by the learned judge *a quo*)

The court also considered other relevant authorities dealing with equitable division of assets between a divorcing couple, in particular, the cases of *Takafuma v Takafuma*¹ *Mangwendeza v Mangwendeza*².

In his order, the learned judge *a quo* apportioned the assets in dispute as follows:-

- (1) the 95 herd of cattle at Inyathi farm and their progeny be shared equally between the parties,
- (2) the value of the improvements on the Inyathi Farm (leased from the State) be shared equally between the parties after agreement on a valuer for this purpose,
- (3) the remainder of Stand 615 Bulawayo Township, also referred to as 50 Josiah Tongogara Street, Bulawayo, be shared equally between the parties,
- (4) the plaintiff (now respondent) be awarded 25% of the shares of Simpson Electrical (Pvt) Ltd and the defendant (appellant) the remainder of the shares and
- (5) the plaintiff be awarded 50% of the value of the immovable property known as Downings Building, Robert Mugabe Way, Bulawayo, which was registered under the name of Muntomuhle Investments (Pvt) Ltd and the defendant, the remainder.

In his grounds of appeal, the appellant lists nineteen (19) instances of alleged misdirection on the part of the court *a quo*. He then prays:-

- (a) that the part of the judgment of the court *a quo* in which it apportioned the assets listed above, be set aside and
- (b) for the following relief:-
 - (i) that the appeal be allowed with costs.

- (i i) that stand 615 Bulawayo Township (50 Josiah Tongogara Street) be awarded to the appellant as his sole and exclusive property and
- (iii) that the cattle at Inyathi Farm, less those acquired from the proceeds of the truck purchased by Nomalanga Sibanda, be ascertained after which the respondent be awarded a 25% share thereof.

Taking into account the respective grounds of appeal, I will consider each of the assets in dispute, as set out above, and the reasoning of the court *a quo* in reaching the decision it did, on the apportionment thereof.

THE NINETY FIVE (95) HERD OF CATTLE AT THE INYATHI FARM, AND THEIR PROGENY

The appellant claims that the court *a quo* misdirected itself by apportioning 50% of the cattle to the respondent “without any basis for such an award.” He further claims that in any case, most of the cattle belonged to his daughter Nomalanga as they had been bought following the sale/barter of trucks bought by her in the United Kingdom.

It was not in dispute that some of the cattle were bought from proceeds of the sale of a truck or trucks (the evidence is not too clear on how many), bought in the United Kingdom in the name of Nomalanga. While she gave evidence for the appellant, the court *a quo* was, however, not impressed by Nomalanga as a witness, and concluded that she was being untruthful when she said that she had bought the cattle for herself through her father. This, after she conceded in court that she had no knowledge of how many cattle had been bought on her behalf, how such acquisition was made nor how and to what extent some of the cattle had been disposed of by the parties. She conceded that the appellant had slaughtered some of the cattle and allowed his mistress to collect others and sell them, without her, (Nomalanga’s), knowledge. The court *a quo* found that further doubt had been cast on

Nomalanga's evidence that she had provided funds for the purchase of the trucks that were eventually exchanged for cattle, by the following facts, admitted by her, that;

- i) one of trucks was actually registered in the name of the respondent;
- ii) it was the appellant who had, from his resources, paid customs duty to clear the vehicles in Zimbabwe as well as procure local registration for them; and
- iii) none of the cattle were registered in her, Nomalanga's name.

In contrast to the evidence of Nomalanga and the appellant, the court *a quo* found that the testimony of the respondent on the issue of the cattle, was credible. The court accepted her evidence that there initially were approximately two hundred and fifty (250) herd of cattle at the couple's two leased farms at Shangani and Nyathi. The majority of the cattle had thereafter been relocated from Shangani to the Inyathi farm. The court *a quo* considered further evidence from the respondent, who had "figures, dates and explanations as to where the cattle were acquired, the disposal of some of the cattle, the multiplication of the cattle" as well as the logistics of their removal from Shangani to Inyathi. It then found that she had credibly established that all the cattle, having been bought from family funds, were assets of the parties as husband and wife, and that none belonged to Nomalanga. The court accepted that the parties disposed of some of the cattle and used the proceeds for family needs. This they did without reference to any of the children. The appellant, according to the respondent, never told her that any of the cattle had been bought for or by any of the children.

The court also accepted the respondent's evidence, which in reality was not disputed, that when she checked on their number in 2010 (three years after the parties' separation) she found there were only ninety five (95) cattle left, out of the original two hundred and fifty (250).

Regarding credibility of witnesses, it is a settled principle of our law that the appeal court will not lightly interfere with a trial court's findings on a witness' credibility. In argument before us, the appellant's counsel urged this Court to depart from this general principle and find that Nomalanga was a credible witness. Given the shortcomings in Nomalanga's evidence, alluded to above, I am persuaded by the submission made on behalf of the respondent that *in casu*, the level required for interfering with the findings of the court *a quo* on the credibility of Nomalanga, has not been met. Such level is eloquently articulated in the case of *Moses Chimbwanda² v Irene Chimbwanda* where the court, after re-stating the settled position already outlined above, went on to say:

“the exception to this rule is where there has been a misdirection or a mistake of fact or where the basis on which the court *a quo* reached its decision was wrong”.

The trial court had the privilege of observing and listening to the witnesses, including Nomalanga, giving their evidence and being cross examined on it. Having considered the evidence placed before the court *a quo* by Nomalanga and its assessment thereof, I do not find that there was any mistake of fact, nor has the appellant alleged one. I am also unable to find that there was any misdirection on the part of the learned judge *a quo* in this respect.

I find therefore that there is no cause to interfere with the court *a quo*'s findings on, and its assessment of, the credibility of Nomalanga as a witness.

While the learned judge *a quo* awarded the respondent 50% of the remnant ninety five (95) cattle and their progeny, the appellant argues she is entitled to only 25% of whatever number would be left after Nomalanga's share has been deducted. As stated above, the court *a quo* correctly dismissed Nomalanga's evidence regarding any claim to the cattle or part thereof.

² SC 28/02 at page 4

The court *a quo* accepted the evidence that the respondent played an active role in the acquisition, upkeep and general care of the two hundred and fifty (250) cattle. This included alternating with the appellant to visit the farms every other weekend for this purpose, and having cattle pens and other necessary infrastructure built. I find, given this background, that there could be merit in the submission made on behalf of the respondent, that the appellant in effect “came out the winner” given the fact that the court awarded her only forty-seven (47) or so of the cattle, out of an original two hundred and fifty (250). However, since the respondent has not challenged this award through a cross appeal, the matter will not further be considered.

I find, in the final analysis, that no case has been proved for this court to interfere with the decision of the court *a quo* on the apportionment of the cattle in question.

THE VALUE OF THE IMPROVEMENTS ON THE INYATHI FARM

It is not in dispute that the Inyathi Farm, having been acquired by the State for resettlement purposes in terms of 16 of the old Zimbabwean Constitution, was allocated to the appellant for his occupation and use. The judge *a quo* accepted the evidence of the parties regarding the role they played in effecting improvements to and on the farm. He also found it “beyond dispute” that as a result of the structures put up through the joint effort of the parties, the value of the farm had been enhanced. The appellant has not challenged the role and contribution of the respondent to the improvements in question. In support of his argument that the she was not entitled to any share of the value of these improvements, the appellant argues, instead, that their value should not be determined separately from the land on which they were located. Further, that the learned judge *a quo* misdirected himself in relying on a principle which is applicable to compensation claimable against an owner of

property by a *bona fide* or *mala fide* possessor for useful improvements, which principle “has no application in a claim against a non-owner of the farm”.

The respondent on the other hand argues that while the Government of Zimbabwe owns all acquired land, it does not own the improvements thereof. This, it is argued, is emphasized by the fact that the former (white) farmers whose land was appropriated under the law are legally entitled to compensation for improvements only. See s 16A (2) (c) and 16B (2) (b) of the old Constitution.

The Inyathi farm was barren land when the parties took occupation thereof. There is no dispute as to either the fact of improvements having been effected on the farm, or their nature. That being the case I am not persuaded by the appellant’s argument that the value of such improvements could, or should, not be determined separately from the land on which they were located. It appears to me, on a purely practical basis, that a professional valuer can accomplish this task with no difficulty at all. Nor has the appellant pointed us to any law that specifically forbids such a determination. Equally, I find no merit in the appellant’s argument that the learned judge *a quo*, in apportioning the value of the improvements as he did, improperly used a principle applicable to compensation claimable against an owner of property by a *bona fide* or *mala fide* possessor for useful improvements.

The respondent did not claim a share of these improvements on the basis of any notion of compensation. She claimed it on the basis of contribution as assessed in terms of the provisions of s 7 of the Matrimonial Causes Act. Indeed I did not understand the respondent to challenge the specific share of 50% that was awarded to the respondent. He does not dispute that for the thirteen (13) years the parties were married, they worked together to generate income and accumulate assets. By the appellant’s own admission, the

improvements effected on the Inyathi Farm were financed from family resources jointly acquired by the parties.

Having said that, it is in my view pertinent to consider the nature of the improvements effected on the Nyathi Farm. The appellant in his evidence referred to “very nice” chalets, a granary and a big storeroom. He stated that the improvements were put up by the respondent, *albeit* using family resources. The respondent, in her evidence, added to the list of such improvements. She mentioned water tanks, concrete cattle pens, maize bans, flushable toilets and a gated fence around the whole property. She also mentioned other assets such as goats, chickens and bans filled with harvested maize.

These improvements, in my view, therefore rightly belonged to the parties, separately and distinctly from the land on which they were located. I do not believe that this reality is negated by the fact that the improvements happen to have been effected on land acquired through the peculiar medium of the land reform programme. The appellant, however, has an advantage over the respondent, in that the land was allocated to him personally, under the land reform programme. He will most likely have continued access to, and use of, the land in question, and indeed, the very improvements that are now in dispute, for a very long time, if not the rest of his life. It should be noted that the offer letter generally offers very long leases.

By contrast, the respondent would have, but for the law regarding sharing of property on divorce, walked away from the improvements that she, in her capacity as a wife working together with her husband, contributed in acquiring and/or effecting on the farm. It is my view that such a result could not have been in the contemplation of the law. The improvements in question should, therefore, rightly be subject to apportionment between the parties, on the same principle of law as applies to their other assets. To deny the respondent a share of these improvements, on the basis argued for the appellant as referred to above,

would clearly not only visit substantial injustice on her, it would also result in the unjust enrichment of the appellant. More to the point, it would offend against the letter and spirit of s 7(3) of the Matrimonial Causes Act (*Cap 5:13*), which is to the effect that the court should endeavour, in determining how to apportion matrimonial assets:-

“...as far as is reasonable and practicable, and having regard to their conduct, and is just to do so, to place the spouses in the position they would have been in had a normal relationship continued...”

There can be no doubt that the court *a quo* would have failed to bring this objective about, had it not granted a share of these improvements, or their value, to the respondent.

As for unjust enrichment, and given the circumstances surrounding the acquisition and erection of the improvements in question, I am satisfied that the respondent would have been impoverished and the appellant unjustly enriched, had the court *a quo* not apportioned the value thereof between the parties. Contrary to any positive rule of law refusing any action to the impoverished person, the whole tenor of the Matrimonial Causes Act is to ensure equity, fairness and justice in the apportionment of matrimonial assets, between a divorcing couple.

The point has already been made that the judge *a quo* had wide discretion in terms of the Act, and in view of the evidence before him, to determine what share to award to either party. Since I can find no fault with his reasoning and conclusions in this respect I would therefore dismiss this particular ground of appeal.

THE REMAINDER OF STAND 615 BULAWAYO TOWNSHIP, ALSO REFERRED TO AS 50 JOSIAH TONGOGARA STREET and NO. 15 KILMANOC ROAD, HILLCREST

The court *a quo* ordered that the first property referred to above, or its value, be shared equally between the parties. The court also ordered that another of the parties’

assets, i.e. 15 Kilmanock Road, Hillcrest, be shared equally between the parties. It is common cause that the appellant presently occupies 50 Josiah Tongogara Street, while the respondent occupies 15 Kilmanock Road, Hillcrest. Nor is it disputed that the two properties are equal in value. The appellant submitted that it would be just and equitable if each party was awarded the property in their respective control, as their sole and exclusive property. At the hearing of this appeal, the respondent conceded it would indeed be just and equitable for the two properties to be awarded to the parties in the manner suggested by the appellant. I am satisfied this concession is properly made and accordingly an order to that effect will issue.

SIMPSON ELECTRICAL (PVT) LTD

The court *a quo* awarded the respondent 25% of the shares in Simpson Electrical (Pvt) Ltd, while the appellant was awarded the rest. The appellant is disgruntled at this order and prays that the award of 25% to the respondent be set aside.

It is not disputed that Simpson Electrical was incorporated in 1989, before the parties' marriage. At the time there were only two directors of the company, that is the appellant and his (now) late brother. The appellant however avers that following donation of his shares to his children from a previous marriage, he was no longer a shareholder in the company. This evidence, as indicated later in this judgment, was later contradicted by the appellant himself. The donation, according to share certificates dated 3 December 1995, was effected almost a year before the parties' marriage.

The court accepted as a trite principle of the law, that a company duly incorporated has a distinct *legal persona*, separate from its shareholders. The court also considered that the veil of incorporation of that company may be lifted where necessary in order to prove who determines or who is responsible for, the company's activities. Based on

what the court *a quo* referred to as the credible evidence of the respondent, the court was of the view that in this case, a lifting of the veil of incorporation of Simpson Electrical (Pvt) Ltd was justified. The ‘credible’ evidence was to the effect that:-

- i) at the time of the parties’ marriage, Simpson Electrical was in fact a small shop which the parties then moved into bigger premises in Pioneer House;
- ii) the new premises having proved too big for the available stock, the parties sold their cars to raise capital to buy more stock for the shop;
- iii) with both parties contributing to the running of the business, it grew in “leaps and bounds”;
- iv) from the substantial income realised, the parties were able to carry out extensive renovations to their property in Woodlands;
- v) from the same proceeds, they were able to buy the Hillcrest property as well as buy and develop two other stands in Pumula South;
- vi) from the still substantial disposable income, the parties bought an industrial stand in Donnington West;
- vii) the respondent also sold her house in Paddonhurst and ploughed the proceeds into Simpson Electrical by way of purchasing stock; and
- viii) the appellant gave her (respondent) 25% shares in Simpson Electrical while the rest remained with the appellant and his children.

While it is accepted that there are no hard and fast rules on the circumstances that justify the lifting or piercing of the corporate veil, with each case generally having to depend on its own facts and merits, I find this *dictum* from the case of *Mkombachoto v Commercial Bank of Zimbabwe & Anor*³ to be apposite;

³ 2002 (1) ZLR (4) at p 268-c

“In my view the court has no general discretion to disregard the company’s separate legal personality whenever it considers it just to do so. The court may ‘lift the veil’ only where otherwise as a result of its existence fraud would exist or **manifest justice would be denied.**” (my emphasis)

From the ‘credible’ evidence listed above, it is evident, as indicated below, that the appellant admitted he had given the respondent a 25% share in Simpson Electrical. Secondly and flowing from this, the respondent, accepting that she owned the 25% shareholding, offered to hand the shares over in return for their fair market value. The appellant, in an about turn, then denied he ever gave the respondent the 25% shares. Further, in contradiction to what he had earlier stated, the appellant averred that the shares still belonged to him and his children. Overriding all this was the undisputed fact that the company had grown substantially from the time the parties got married, and that the respondent had made significant contribution to such growth. The contribution had resulted in the family earning so much income they were able to buy and develop several other properties.

The evidence of both the appellant and the respondent does not suggest that the other shareholders, *to wit*, the appellant’s and one of the parties’ children, made any contribution to the capital or other assets of the company, nor in any other manner. The relationships which lay behind the corporate veil are clearly revealed as between the appellant and the respondent. It is evident that the parties themselves were the administrators, controllers and contributors to the growth of Simpson Electrical. Had the veil not been lifted, such a relationship would not have been revealed, to the ultimate detriment of the respondent.

The respondent was actively involved in moving the Simpson Electrical Shop to bigger premises and responsible for stocking the expanded shop, for which purpose she travelled back and forth between Zimbabwe and South Africa in order to source such stock. As a result the shop, in other words, Simpson Electrical, “grew in leaps and bounds”. Her

contribution, as the court *a quo* found, was substantial. By arguing that no case has been made to pierce the corporate veil of Simpson Electrical, the appellant in other words is suggesting that all the assets including the share acquired through the contribution of the respondent, should remain the property of Simpson Electrical. That effectively, the respondent must walk away without anything from Simpson Electrical. I do not doubt that denying the respondent any share of this company would result in manifest injustice.

I am satisfied, given the evidence on this matter, that the learned judge *a quo* properly lifted the veil of incorporation of Simpson Electrical (Pvt) Ltd.

The appellant further submitted that in awarding the 25% share to the respondent, the court *a quo* erred in making an order *mero motu*, “which neither of the parties had asked for.”

This argument in my view lacks merit. The learned judge *a quo* found that the respondent’s assertion that she had been given and therefore owned 25% of the shares therein was confirmed by the appellant’s own legal practitioners, in a letter written to the respondent’s legal practitioners of record. He, however, went on (in my view correctly), to determine the matter on the basis of contribution. Having assessed the credibility of the witnesses and the evidence they gave in relation to Simpson Electrical, the court found as follows and I quote from p 12 of his judgment:

“The evidence points to a major contribution by the plaintiff (respondent) in the growth of Simpson Electrical. After the plaintiff got involved in the running of Simpson Electrical, there was fundamental expansion, thanks to the joint effort of both parties.”

The appellant, in para 13 of his Heads of Argument, states that the respondent’s evidence was basically to the effect that she had contributed to the working

capital of Simpson Electrical and was therefore entitled to a share. I do not find that position to contradict the respondent's submission that she owned 25% of shares in Simpson electrical and would give those over to the appellant on payment of their market value. Even though she did not state so specifically, and given the context in which her reference to 25% was made, the probabilities clearly favour a finding that she claimed the 25% share or regarded it as hers, on the basis of her contribution. The court *a quo* found that such contribution had been credibly established.

I am satisfied the court properly reached this decision and would accordingly dismiss this ground of appeal.

MUNTOHUHLE INVESTMENTS (PVT) LIMITED

The court *a quo* lifted the veil of incorporation of Muntomuhle Investments (Pvt) Limited and awarded a 50% share to each of the parties, in the property known as Downings Building, Robert Mugabe Way, Bulawayo. This building was registered under the name of this company and constituted its main asset.

The appellant challenged both decisions, and charged, among other grounds, that the court erred in taking away the property of the shareholders of the company without giving them an opportunity to be heard. The shareholders referred to were his children, including one whose mother was the respondent.

Having considered the evidence placed before the court *a quo* as well as the judge's assessment thereof, I do not find that there is any merit in the appellant's arguments.

The learned judge *a quo* found that the appellant was not only running the show at Muntomuhle, he and the company had become one. Nomalanga, one of the alleged

“shareholders,” in Muntomuhle, put the correctness of the conclusion of the court *a quo* that the appellant was its *alter ego* beyond doubt when, in her evidence, she indicated that:

- i) the Muntomuhle company never had an annual general meeting or director’s meeting.
- ii) The “shareholders” had never been paid dividends.
- iii) They were never (as “shareholders”) made aware of the donation to them of shares or company affairs and
- iv) As far as she was aware, Muntomuhle was the appellant’s project and he could do with it as he wished or liked.

The learned judge *a quo* further found that Muntomuhle was actually an invention of the appellant, created solely for the dissipation of the assets of Simpson Electrical in order to defeat the respondent’s claim. The appellant, according to the evidence of the respondent, which was found to be more credible than that of the appellant, not only incorporated Muntomuhle Investments without her knowledge, he proceeded, again without her knowledge, to register the building in question in the name of Muntomuhle Investments.

Against this background, I find that the inference of an attempt by the appellant to deceive, if not defraud, the respondent, is difficult to escape. There is case authority to the effect that conduct of this nature justifies the piercing of the corporate veil. In *Cape Pacific Ltd v Lubrier Controlling Investments (Pty) Ltd & Ors*, the court had this to say:

“...when the corporation is the mere *alter ego* or business conduit of a person, it may be disregarded. This rule has been adopted by the courts in those cases where the idea of the corporate entity has been used as a subterfuge and to observe it would work injustice.”

I find this *dictum* to be eminently apposite given the facts of this matter.

Having in addition considered the respondent's immense contribution towards the main asset of Muntomuhle, the learned judge *a quo*, in the result, concluded that he had no option but to unmask Muntomuhle and declare the plaintiff owner of 50% of the net value of the building in question. I do not find fault with this decision.

As for the need to hear Muntomuhle's other shareholders, I am persuaded that the court's finding that the company was in fact the *alter ego* of the appellant, rendered it unnecessary to consider any other "shareholders" in the administration and control of the company. This, I find, is a consequence that is anticipated in the following passage by C Nkala and TJ Nyapadi in their book, "Company Law in Zimbabwe", 1995 ed at p 8;

"...When the courts or legislature lift the veil of separate *legal persona* they disregard the corporate entity and look to the relationships which lie behind the corporate form..."

In any event at no stage did the other shareholders take any action to protect their interest in the property, even though they were aware that the company was to be the subject of litigation in matrimonial proceedings.

I therefore find that the learned judge *a quo* correctly, and without reference to its other alleged shareholders, disregarded the corporate entity of Montumuhle Investments that the appellant and his daughter Nomalanga alleged existed.

The appellant challenges the court *a quo*'s award of 50% of Downings Building to the respondent, on another ground. In his Heads of Argument he concedes that the building in dispute was acquired through income originally drawn from Simpson Electrical (Pvt) Ltd. He however, argues that, having awarded her only 25% shareholding in Simpson Electrical, the source of the funds, the court *a quo* should not have awarded the respondent a 50% share of Downings Building. My understanding of this argument is that if the court was to award

the respondent any share of the building, it should not have been more than 25%, a share that would reflect her shareholding in Simpson Electrical.

The evidence before the court suggests there was no direct link between the funds drawn from Simpson Electrical, and those eventually used to purchase the building which is the main asset of Muntomuhle Investments.

The judge *a quo* made this clear when he said the following regarding the acquisition of the main asset of this company, i.e. Downings Building;

“ They used money from the business (Simpson Electrical) to pay for an industrial stand. When the defendant (appellant) went to pay for the stand, he registered it in his name... they toiled to build a factory i.e. a double storey structure. The factory was massive. They rented it out to a company known as Stex. The tenants developed interest in the factory and offered to purchase it. The parties agreed to sell it. The proceeds of the sale of the factory were used to buy and re-construct the building in 129-130 Robert Mugabe Way, which is the major asset of Muntomuhle Investments. This fact is admitted by the defendant as evinced by his letter dated 5 March 2007 in the bundle of documents”.

In short, the funds from Simpson Electrical were used to purchase a commercial stand, on which a factory was then built. The factory was initially rented out and later sold to the sitting tenants. Funds realised from these latter endeavours were then used to buy the building in question. In all these developments, there was nothing to suggest that the parties' perception of the share of their entitlement in Simpson Electrical in any way determined or defined the extent of their contribution to the eventual acquisition of the building in question.

Instead of engaging in the type of mathematical calculations that the appellant argues for, the judge went on to use his discretion, as required by the law, in assessing the awards that he made. I do not find that such discretion was improperly exercised.

I would, therefore, dismiss this ground of appeal as having no merit.

In the result, I make the following order.

1. The appeal succeeds only in part.
2. The order of the court *a quo* in relation to the two properties referred to as the Hillcrest and the Tongogara Street properties, is set aside and substituted with the following order by consent:
 - (i) Stand number 8053 Bulawayo Township, also known as 15 Kilmanock Road, Hillcrest, Bulawayo, be and is hereby awarded to the respondent as her sole and exclusive property; and
 - (ii) The remainder of Stand 615 Bulawayo Township, also known as Josiah Tongogara Street, Bulawayo, be and is hereby awarded to the appellant as his sole and exclusive property.
3. The appeal in relation to the assets and property referred to in paragraphs 6,7,12 and 13 of the order of the court *a quo*, is dismissed.
4. The appellant shall pay the costs of this appeal.

GARWE JA: I agree

GOWORA JA: I agree

Webb Low & Barry, appellant's legal practitioners

Cheda & Partners, respondents' legal practitioners