

THEMBA TSHUMA

Versus

SIHLE TSHUMA

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 27 OCTOBER AND 15 DECEMBER 2005

G Nyoni for the plaintiff
G Nyathi for defendant

Judgment

NDOU J: In this case notice of the proceedings was served on the third parties by being subpoenaed as witnesses. They are in attendance as witnesses for the plaintiff. I interviewed them and explained to them their respective positions as necessary third parties as they both have direct and substantial interests in these proceedings. This is so because the defendant alleges that the house known as 2468 Nkulumane, Bulawayo and a Toyota Venture motor vehicle registered in South Africa are part of the matrimonial estate of the parties in the present matrimonial proceedings. Both have unequivocally waived the right to be joined and undertaken to be bound by any decision that the court may make.

These parties are content with testifying as witnesses for the plaintiff. In the circumstances, the necessary third parties have dispensed with the need to be joined in *Eden Village (Meadowbrook) Pty Ltd & Anor v Edwards* 1995(4) SA 31(A) at 46 and *BHT Water Treatment Pty Ltd v Leslie & Anor* 1993(1) SA 47(W). Counsel have

submitted in chambers, that divorce be granted on the basis of the consent with the outstanding issues of the

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above-mentioned house and the car being left for determination in the future. The defendant's counsel would only make this concession on condition that there is a guarantee that the matter will indeed proceed with due regard to its matrimonial foundation. I believe I can make an order which takes into account the interests of both parties and ensure in particular that the outstanding issues are properly determined by this court in the future.

Accordingly, it is ordered that:

1. A decree for divorce be and is hereby granted.
- 2.** The movable matrimonial property be shared as follows:
 - 2.1 For the Plaintiff
 - 1 x Three plate stove
 - 1 x Aiwa radio and
 - 1 x bedroom suite
 - 2.2 For the defendant
 - 1 x 3 piece sofas
 - 1 x LG colour television set
 - 1 x DSTV complete with dish, decoder and LNB
 - 1 x room divider
 - 1 x sweater machine
 - 1 x wall watch
 - 1 x coffee table

1 x wardrobe

1 x comforter

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1 x sensor light

1 x washing basket

1 x iron

1 x double door fridge

All kitchen utensils as follows:

8 silver spoons

24 spoons

6 knives

4 water glasses

32 plates

20 piece blue cups

4 coffee mugs

1 tray

1 electric kettle

1 toaster

1 rack

1 bucket

3. The following issues are deferred for determination at a later hearing with the parties constituted as they are at present:
 - a) whether or not house number 2468 Nkulumane, Bulawayo registered in the name of Thembi Tshuma is matrimonial property.

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- b) Whether or not the Toyota Venture motor vehicle registration number JHV054GP registered in the name of Richard Tshabalala is matrimonial property.
4. Each party to bear own costs.

Messrs James, Moyo-Majwabu & Nyoni plaintiff's legal practitioners
Sansole & Senda, defendant's legal practitioners