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 Judgment No HB 40/07
 Case No. HC 1609/04

IGNATIUS MAVUNGA

VERSUS

ROSINA MAVUNGA (NEE MUTERO)

IN THE HIGH COURT OF ZIMBABWE
 CHEDA J
 BULAWAYO 4 JULY 2006 AND 15 MARCH 2007

Mr Mazibuko for plaintiff
Mr Mutsauki for defendant

Civil Trial

CHEDA J: This is a trial for the dissolution of a marriage and ancillary relief attended thereto.

The parties were married to each other in terms of the civil marriage on the 24th of October 1991.

All other issues were resolved through negotiations except for the two immovable properties namely stand number 14899 Selborne Park, Bulawayo and a house in a farm in Karoi. I will therefore confine myself to the contested properties as follows: -

(a) Karoi House

Plaintiff's evidence

Plaintiff's evidence was that the 8-roomed house in Karoi is not his but his late father's. He also stated that it was left for his elder brother Kudakwashe who is also late. It was his evidence that it was built by his late brother and his only role, therein, was that of supervision during its construction. To prove this, Kudakwashe deposed to an affidavit where amongst other issues he stated " I built a farm house for the family at a cost of \$50 000.00 and its not yet complete up to date". This affidavit is dated 1st day of July 1998. It is the same year that plaintiff issued summons for divorce against

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defendant which summons was later withdrawn, and a fresh one issued in 2004 resulting in these proceedings.

(b) **Selborne House**

It is his evidence that, he, together with defendant registered for a stand with the Bulawayo City Council. He was advanced a loan by his former employers which he used to purchase the said stand. He produced receipts as exhibits of payments to the Bulawayo City Council.

He denied that his wife ever financially contributed any money towards the purchase or service of the mortgage bond which he subsequently secured for the said house. He also told the court that he had to sell a flat which he had acquired before the marriage. He also sold a motor vehicle in order to develop the said stand. He, therefore, denied that his wife ever substantially contributed to the purchase or development of the said stand.

He, however, acknowledges that she contributed by registering the said stand at Bulawayo City Council.

In her evidence defendant dealt with the issues as follows: -

(a) **Karoi House**

Defendant's evidence

It was her evidence that when she got married to plaintiff he did not have a house. The family set up was such that the children were entitled to build their own houses on the farm. Plaintiff did not have a house, they therefore decided to build one and they employed builders to do so. She also stated that each brother had his own house on the farm. Therefore, the assertion, that, plaintiff's brother was sending money from overseas for the construction of the house according to her was not true.

It was further her evidence that they were both actively involved in the agricultural activities in the farm and the expenses and profits from this project were to their account.

In other words it is her evidence that the proceeds from their agricultural activities contributed to the construction of the house.

(b) **Selborne Park**

It is her evidence that when the Bulawayo City Council allocated the said stand to them, they did not have any money. The Bulawayo City Council required \$30625.00 and they had to pay in installments starting in September 1993 up to December 1993. The payment was from their own savings not a loan sourced by plaintiff. She disagreed with him that the proceeds from the sale of the flat which was sold in 1993 was used towards the purchase of the stand as they only fully paid for it in 1994.

She admitted that indeed he obtained a loan from Barclays Bank and she stood in as surety for that loan.

It was also her evidence that the car which plaintiff was referring to as his, was infact one of the family cars. They decided to sell it in order to raise money for the development of the said stand. She further told the court that she was actively involved in the construction of the stand and it is for that reason that she feels that she is entitled to 80% while he should be awarded 20% of the nett value of the proceeds of this stand.

I find the following facts to have been established by the parties. That the parties had been married for a reasonably long time and have been in separation for nearly ten years, each party having taken and kept what they took away on separation.

I find that the Karoi farm is a family farm with each son having had a right to build his own house thereat. I do not see how the late Kudakwashe could have built a house for his brother who was married, employed and able-bodied. The affidavit which he deposed to was in my view designed to buttress plaintiff's maneuvers to outplay the role played by his wife thereby depriving her of her genuine right to claim her stake in the house. I also find that she indeed played a meaningful role in the development and maintenance of this house in the farm. In addition thereto, she was also involved in the agricultural activities shown in exhibit 14 which is a record of the said activities in this farm, despite plaintiff's attempt to make it appear that she was not involved. Her role

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therefore can not be ignored as it appears prominently throughout the existence of their marriage.

It is a fact that both parties were gainfully employed. They pulled their resources together in order to purchase the stand and construct a house. It is not true that plaintiff used the proceeds from the sale of his flat to solely fund the purchase of the stand. If this was so, there would not have been any need for the stand to have been paid for by installments when he had money from the sale of the flat.

The car that was sold was a family car and was sold in order to develop the stand. It is therefore not correct to say that the purchase of the stand together with its development and the development of a house in Karoi were made possible by plaintiff's efforts alone.

The loan obtained from Barclays Bank by plaintiff was made possible by defendant who stood in as surety. Again her role can not be wished away.

It is trite that parties' contributions towards their estate has to be equitably distributed on dissolution of their marriage. There is no mathematical formula in these matters but the courts must at all times bear in mind that during the existence of the marriage the parties placed their hearts, souls, money and all other contributions into the acquisition of their properties and consequently on dissolution they have to be awarded accordingly.

Even, if, defendant might not have financially contributed to the acquisition of the land on the Karoi farm by virtue of the fact that, it was already in existence at the time of her marriage, the fact that she was married to plaintiff and she helped him maintain a house is contribution enough to warrant her a meaningful share in the matrimonial assets. The court's recognition of matrimonial contributions is no longer confined to tangibles alone, See *Ntini –v- Masuku* HB 69/03.

Therefore, in my view, the fair, just and equitable distribution of the parties' matrimonial assets should be made as follows: -

Accordingly it is ordered that: -

- 1) "Decree of divorce be and is hereby issued.

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- 2) Custody of the minor children Tatenda Alexio Mavhunga (Date of Birth 21 April 1993) and Chiedza Lynette Mavhunga (Date of Birth 6 August 1997) be and is hereby awarded to defendant with plaintiff having a reasonable access to the said children.
- 3) Each party is to keep the property in its possession.
- 4) The house in Karoi is to be valued by a reputable Estate Agent and be sold to best advantage with the nett value of the proceeds shared equally between the parties.
- 5) The stand 14899 Selborne Park, Bulawayo be valued by a reputable Estate Agent and be sold to best advantage with plaintiff being awarded 60% and defendant 40% of the nett proceeds thereof.
- 6) Each party to pay its own costs.”

Messrs Calderwood, Bryce Hendrie and Partners, plaintiff’s legal practitioners
Marondedze, Nyathi, Majome and Partners, defendant’s legal practitioners