

Case No. HCA 41/05

Xref No. HC CC.32/04

CLIFFORD TSHUMA

VERSUS

OFTEN TSHUMA

IN THE HIGH COURT OF BULAWAYO
CHEDA AND NDOU JJ
BULAWAYO 5 JULY 2007 AND 23 OCTOBER 2008

Mr C Dube for the applicant
Mr Moyo-Majwabu for the respondent

Appeal

CHEDA J: This is an appeal against the decision of magistrate court, Bulawayo.

The brief facts of this matter which are largely common cause are that the parties had been married 26 years before their marriage reached a grief.

Respondent instituted divorce proceedings against appellant and claimed and was awarded among other things the following:

- 1) the parties' matrimonial home being stand 31891 Entumbane, Bulawayo.

All household goods and effects at the rural home

certain movable property which is at the parties' matrimonial home which she had argued belonged to respondent's son, one Doubt Dlodlo.

Doubt Dlodlo is the appellant's step son whom he looked after and is now a major.

Appellant now appeals against this decision. It is his argument that the court a quo should have ordered an equal share in the distribution of assets.

The parties had been married for 26 years. Appellant was the sole breadwinner while respondent was looking after the matrimonial home which contribution is now recognized.

The issue which falls for determination is whether or not the court a quo erred in granting the order appealed against.

Firstly it is trite law that our courts now recognize both tangible and intangible contributions made by wives during the subsistence of a marriage, See *Ntini v Masuku* HB 10/03. The courts, however, lack precession tools with which to use in the

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distribution of matrimonial property to the total satisfaction of the fighting parties. Therefore, the courts will, in addition to its reliance on facts, it has to resort to value judgment in order to reach a just and equitable distribution in the circumstances. In the present case arguments by respondent with regards to the ownership of property by Doubt Dlodlo is not convincing. It does not make any sense for him to have kept the movable property in this home for such a longtime without any indication as to when he would take it. In my view, this was merely brought up in order to defeat appellant's claim.

Both the rural and urban homes belong to the parties and in my view they should be granted equal shares as they both contributed to their upkeep albeit their different ways. I agree with appellant's submission that the court erred in its decision with regards to the distribution of the matrimonial assets.

This is one of those cases where the court should have applied the rules of equity thereby avoiding unjust enrichment on the part of the respondent.

For the above reasons the appeal succeeds and the following order is made:

- (1) That stand number 31891 Entumbane, Bulawayo be sold to best advantage within 3 months of this order and the net proceeds be shared equally between the parties.
- (2) That all the property listed in the summons as belonging to Doubt Dlodlo be and is hereby declared matrimonial property and should be sold and the proceeds thereof be shared equally by the parties.

That the parties rural home and its household goods and effects be sold to best advantage within 3 months of this order, and the proceeds be shared equally between the parties

- (3) That respondent pays the costs.

Messrs Lazarus and Sarif, applicant's legal practitioners
James Moyo-Majwabu and Nyoni, respondent's legal practitioners

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Ndou J.....I agree