

**BERNARD NSINGO**

**Versus**

**SONENI NSINGO**

IN THE HIGH COURT OF ZIMBABWE  
NDOU & MATHONSI JJ  
BULAWAYO 10 OCTOBER & 3 NOVEMBER 2011

Appellant in person  
*N. Dube* for the respondent

Civil Appeal

**NDOU J:** The parties were married to each other in terms of the then African Marriages Act [Chapter 238] on 26 June 1980. Under Bulawayo Magistrates case number CC 32/10 the respondent instituted proceedings seeking the dissolution of the marriage and ancillary relief. This appeal is basically about the sharing of the matrimonial house known as number 4369 Nkulumane, Bulawayo. The trial magistrate ordered that the said property be shared equally between the parties. The appellant was given six (6) months to buy out the respondent's 50% share of the property, failing which the property was ordered to be sold and the proceeds thereof shared equally. The property was acquired during the subsistence of the customary union between the parties. The appellant does not seem to appreciate the provisions of section 7(4) of the Matrimonial Causes Act [Chapter 5:13]. What is taken into consideration is not just the direct financial contributions and the party in whose name the property is registered. The court is enjoined by section 7(4) to also take into account the indirect contributions made by the each spouse to the family. Such indirect contributions include, *inter alia* looking after the home and caring for the family and any other domestic duties. Other relevant factors include the age of the respondent, her future financial needs, obligations and responsibilities – *Usayi v Usayi* 2003(1) ZLR 684 (S).

In this case the Supreme Court upheld a judgment of the High Court awarding the wife a half share of matrimonial house. At pages 687-688, ZIYAMBI JA had this to say:-

“Mr Gijima, who appeared for the appellant was persistent in his submission that the respondent, having made no financial contribution to the acquisition of the house, was not entitled to an award of 50 percent of the sale price. Having regard to the provisions of section 7(4) of the Act, this submission is unsound. The Act speaks of direct and indirect contributions. How can one quantify in monetary terms the contribution of a

wife and mother who for 39 years faithfully performed her duties as a wife, mother, counselor, domestic worker, housekeeper, day and night nurse for her husband and children? How can one place monetary value the love, thoughtfulness and attention to detail that she puts into the routine and sometimes bring duties attendant or keeping a household running smoothly and a husband and children happy? How can one measure in monetary terms of creation of a home and the creation of an atmosphere therein from which both husband and children can function to the best of their ability? In light of these many and various duties, how can one say as it is often remarked “throughout the marriage she was a housewife. She never worked”? In my judgment, it is precisely because no monetary value can be placed on the performance of the duties that the Act speaks of “direct or indirect contribution made by each spouse to the family, including contributions made by looking after the home and caring for the family and any other domestic duties” – see also *Gonye v Gonye* SC-15-09; *Takafuma v Takafuma* 1994 (2) ZLR 103 (S) and *Mangwedeza v Mangwendeza* 2007 (1) ZLR 216 (H).

In this case the parties were married for around thirty (30) years. The respondent spent most of her married life looking after the party’s rural homestead. There was no evidence led during the trial in the court *a quo* which suggests that she failed in her duties and responsibilities as a wife. There is no misdirection on the part of the magistrate in sharing the matrimonial house equally. What the appellant is pleading in the appeal is essentially poverty i.e. that he cannot buy out the respondent’s 50% share. There is a provision in the magistrate’s order that caters for such inability to buy out the respondent. The property should just be sold and the proceeds thereof shared equally as directed by the magistrate. The magistrate’s judgment in this regard cannot be faulted. There is no merit in this appeal at all.

Accordingly, the appeal is dismissed with costs.

Mathonsi J ..... I agree

*Legal Resources Foundation, Bulawayo, respondent’s legal practitioners*