

NUTE NCUBE

VERSUS

SHEILA MAGLAZI

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA AND CHEDA JJ
BULAWAYO 21 MARCH 2011 AND 16 JUNE 2011

Mr James for appellant
Ms Bhunu for respondent

Civil Appeal

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

The parties were married to each other under customary law and stayed together for a period of 6 years. The marriage irretrievably broke down and the trial court “dissolved” it and thereafter distributed the shares in the immovable property, being 7940/16 Sizinda, Bulawayo by awarding 75% to appellant and 25% to respondent. Appellant has taken issue with the magistrates’ decision arguing that respondent did not contribute anything toward this property. He further argued that the court erred by awarding respondent the following property:

- (1) 1 x 4 plate stove
- 7x 20 litre containers
- ½ blankets
- 1 new double bed
- 1 black bin

Evidence presented and accepted in the court *a quo* is that the parties were married under customary law and were in that union for 6 years. At the time of the union, appellant had already acquired a stand which stand they jointly, proceeded to develop into a habitable house, albeit their different contributions.

The trial court distributed the matrimonial assets as stated above. However, appellant argued that respondent should not have been awarded 25% share in the immovable property as she did not procure quotations, look after building materials and look after appellant's minor child. He went further and argued that she did not make any financial contributions towards this house.

It is now trite law that a spouse's contribution should not only be confined to tangibles, but intangibles as well. It is now settled law in our jurisdiction that our courts will not hesitate to lean in favour of women on the principle of unjust enrichment, all in the spirit of law development and justice. I dealt with this principle extensively in *Ntini v Masuku* 2003 (1) ZLR 638(H), see also *Mtuda v Ndudzo* 2000(1) ZLR 710(H); *Mashingaidze v Mashingaidze* 1995 (1) ZLR and *Chapeyama v Matende and another* 1999(1) ZLR 534(H).

The trial court made a correct finding as far as the parties' contributions are concerned and as such it cannot be faulted.

In light of the above, I see no misdirection on the part of the court *a quo* and as such its reason is well ground in our law and can not attract interference.

Accordingly, the appeal is dismissed.

Cheda J.....

Kamocha J agrees.....