

**FELIX MATARUSE**

**Versus**

**ANGELA MATARUSE**

IN THE HIGH COURT OF ZIMBABWE  
KAMOCHA J  
BULAWAYO 29 SEPTEMBER 2015 & 29 OCTOBER 2015

**Civil Trial**

*Miss S. Hlabangana* plaintiff's counsel  
*Mrs S. Mabhena* defendant's counsel

**KAMOCHA J:** The parties in this matter were joined in matrimony on 4 June 1991 and the marriage still subsists. On 12 November 2010 plaintiff instituted these proceedings against defendant claiming the following:- an order for a decree of divorce; that the custody of the parties' minor children be awarded to the defendant with plaintiff having reasonable rights of access; that the sharing of property be in terms of paragraph 8 of the declaration; that plaintiff continues to buy groceries, uniforms and clothes and pay school fees for the minor children until the last born child attains the age of majority or becomes self supporting whichever occurs first.

By the time the matter came for trial the parties had nearly resolved the matter amicably except for one issue. They filed a consent paper relating to the matters that they had amicably resolved and prayed that what was contained therein be made an order of this court.

The sole issue for determination for the court was "Whether or not defendant is entitled to a share in Plot AD 3 M & A Road, Rangemore, Bulawayo, and if so, what percent?"

The plaintiff gave *viva voce* evidence in an effort to show that the defendant was not entitled to any share in that property. His testimony was that the two were married in either 1991 or 1992. He did not remember the correct year.

He said soon after they got married his wife declared that each one of them should use his/or her money as he or she pleased. Both were employed at the time they got married. He was employed by the National Railways of Zimbabwe as an artisan and was a couch builder. His salary was in the region of \$900,00 Zimdollars. During the subsistence of the marriage he bought two immovable properties. The first one was the one at the centre of this dispute number AD 3 M & A Road, Rangemore. He said in 1986 he joined a co-operative called Bob Smile where he was contributing about \$500,00 per mensem for the year 1986, 1987 and 1988. In the year 1989 he was due for a loan from the co-operative and was given double the contribution he had made that far.

He then started a business of sewing and money lending. He formed a company which was called F M Pawn Brokers but the company was not registered due to financial constraints. It was only registered in 1995 only to be dissolved in year 2000. The proceeds from the dissolved company were then invested in the purchase of the Rangemore property.

He contended that his wife did not make any contribution towards the purchase of that property and not even in the improvements made to the property. He went further and alleged that she did not even take care of the children and their welfare. He claimed to have shouldered that responsibility single handedly. The situation was that if she made any contribution she would demand back the money from him. Plaintiff alleged that their children started going to boarding school when they were in grade 3. He used to take them there but his wife never went there.

He further portrayed that his wife was such a bad mother that on one occasion when he arrived home at 10pm their 3 months old child had such a high temperature which could have killed the child if not attended to medically. When he suggested that they should take the child to a 24 hour service clinic, she refused and said she felt sleepy and wanted to sleep. It was not difficult to see that he was exaggerating.

Under cross- examination it was clear that he could not be relied upon. When asked why he did not mention in his synopsis the Bob Smile Co-operative and the alleged sewing business his replies were not convincing. It was clear that he was attempting to improve his story as the case progressed.

When asked if he had any proof to show that his F M Pawn Brokers company started operating in 1989 his reply was again unsatisfactory and unconvincing. He was unable to satisfactorily explain why a company formed in 1989 was only registered in 1995 after the parties' marriage. He was clearly being untruthful.

The defendant's testimony was that she was resident at the said Rangemore property since February 1999. The plaintiff moved out of the property in February 2010 and is staying elsewhere.

She is employed by Government as a school bursar. She has worked at several schools in Bulawayo. At the moment she works at Rangemore Primary School. She has been working as a school bursar for 32 years now.

I pause to observe that she started working in 1983 before the parties got married 1991. Defendant narrated how the couple formed a company called F M Pawn Brokers. She said it was formed by the two of them in 1994 and registered that same year under BICIE Business Consultants. She alleged that plaintiff used her bank card to withdraw US\$250 from her bank account and used the money to register the company. The plaintiff told her that that was what he had done. Their core business was money lending. The capital was from their salaries.

Her evidence was that the assertion by the plaintiff that shortly after they got married she said each party should use its money as it saw fit was false. She said the truth of the matter was that plaintiff was the head of the family. As such, he took her bank card so as to be in control of her monthly salary with effect from June 1991. He kept her bank card at his place of employment. She would tell him when government workers were going to be paid. He then

would tell her to give him a list of items required for the home and he would buy the items himself. Plaintiff told her that he was saving some of the money for the family to buy a home.

What was worrying was that plaintiff sometimes failed to buy some of the items listed leading to the family running short of food. The plaintiff would have spent money on beer as he was a heavy drinker. She described him as an excessive drinker who when in that condition would shout at her and even assault her.

It was her evidence that he did not even give her pocket money from the money they pooled together as he alleged that he was saving it to buy a house for the family.

The plaintiff kept her bank card from 1992 to 1997 – for 5 years in control of all the money she earned. She only demanded her bank card back in 1997 because she was pregnant and was preparing for the new baby. She returned it to him after delivery of the new baby.

She produced the pay slips to indicate that she was gainfully employed. She was earning \$694,52 Zimbabwe dollars as far back as 1993 and is presently earning a net salary of US\$216,77. Her pay slips are marked as exhibits 1 and 2 respectively. Plaintiff was in control of all the money the parties earned. In the result she averred that she was entitled to a 50% share in the Rangemore house.

She explained to the court that the idea of forming F M Pawn Brokers came from her. She got it from Mzilikazi School where she was a bursar. While she was there, she with other members of staff were lending money to people who paid it back with interest. She introduced the concept into her family but when the company was being registered the plaintiff told her that it was not advisable for husband and wife to be directors of the same company. He instead put his mother and brother to be directors of the company. She believed the plaintiff's explanation that is why she was not a director of a company which was her brainchild. She, however, worked at the company at month ends as she audited the books of the company.

Under cross-examination she was asked why she did not report the assaults allegedly perpetrated by plaintiff on her to the police. Her answer was that her religious teaching and beliefs discouraged her from doing so. That is difficult to believe.

Overall she was a good witness who clearly narrated her story and was not shaken under cross-examination. She was worth to be believed. This court prefers her story to that of the plaintiff. Wherever the two stories are in conflict I prefer the well given one of the defendant. This court finds she was already working when the parties got married and was therefore already gainfully employed. When the parties got married the plaintiff as the head of the family took possession of her bank card into which her monthly salary was deposited and had a total control of her full salary.

This court also finds that F M Pawn Brokers was formed and registered by both parties in 1994. The suggestion that it was formed in 1989 before the parties got married is false. Similarly the suggestion that the defendant said each party should use its money as it saw fit is also false. It is not difficult in this case to see that defendant made immense contribution in the family. She undoubtedly deserves a 50% in the Rangemore home.

In the result, it is ordered as follows:

1. The consent paper filed of record on 30 September 2015 be and is hereby made an order of this court.
2. The Rangemore property being Plot AD 3 M & A Road Rangemore, Bulawayo be shared equally between the parties *id est* 50% each party.
3. Each party shall bear its own costs.

*Zimbabwe Women Lawyers Association*, defendant's legal practitioners