

HC 2047/00

EDITH MAPFUMO (nee TEPA)  
versus  
CHARLES BOAS MAPFUMO

HIGH COURT OF ZIMBABWE  
SMITH J  
HARARE, 29 May and 23 July 2003

Mrs *Mukweva*, for the plaintiff  
Mr *Sigauke*, for the defendant

SMITH J: The plaintiff (hereinafter referred to as “Edith”) issued summons claiming a divorce from the defendant (hereinafter referred to as “C.”), custody of the three children of the marriage, maintenance for herself at the rate of \$2 500 a month and for the children at the rate of \$1 000 a month for each child and a half-share of the matrimonial property, both movable and immovable. The immovable property is house No. 10924, Shashe Close, Budiro 5A Harare (hereinafter referred to as “the Matrimonial Home”). Edith wants it to be sold and the proceeds shared equally between the parties. C. admits that the marriage has broken down irretrievably. As regards the Matrimonial Home, he avers that he acquired it prior to the marriage and therefore it is not subject to apportionment. He considers that the movable property should be apportioned on the basis that he gets 70% of the value thereof and Edith gets 30%. He considers that he should pay maintenance in the sum of \$500 a month for Edith and \$400 a month for each child. C. filed a counter-claim in which he sought a divorce and offered maintenance as set out above. He also averred that during the subsistence of the marriage, the only property acquired by the parties was a knitting machine, a small radio and some bed linen. He proposed that it be apportioned on the basis that he gets 70% of the value thereof and Edith gets 30%.

Edith testified as follows. Both parties have agreed that the marriage has broken down irretrievably. The three children of the marriage, P T (born [day/month] 1992), C ([day/month] 1995) and E (born

[day/month] 1999), were in her custody and she wanted to be awarded custody. She needed maintenance in the sum of \$55 000 a month, being made up of \$15 000 for P., \$10 000 each for C. and Edith, and \$20 000 for herself. She produced a list of her monthly expenses. The three children are living with her. The two older ones go to a private school in Zambia and the youngest goes to a crèche. She often goes to Zambia to visit her mother. She pays the school fees from the maintenance that C. is paying her. C. has a minor child by another woman who is staying with him. When problems in the marriage started C. sent her and the children away. She went to stay with her mother and sent the two older children to a school in Zambia. When she returned from Zambia she left the children with her mother, because she did not know where she would be staying. Initially, C. had denied her access to the Matrimonial Home but then he permitted her to occupy 1 room. There are 9 rooms in the Matrimonial Home. C. can afford to pay maintenance as he is employed as a driver by a haulage contractor. His payslip for May 2003 shows that his net salary that month was \$72 579. She earns an average of about \$10 000 a month from buying and selling goods and C. pays her \$9 000 a month for maintenance. She said that she hoped to be able to return the children to this country after the divorce is through. They are still minors and she wants to be awarded custody. C. is an international truck driver and so, most of the time, he is away from home outside the country. When she left C. and went to Zambia temporarily he never visited the children. Even though he passed through the town where her mother was living with the children, he did not try to see them. If she had custody she would see no reason why C. should not be given reasonable rights of access.

As regards the matrimonial property, Edith testified as follows. She claimed the solar panel, the colour TV set and VCR, the knitting machine, the small radio and the curtains. However, she had sold the knitting machine when she went to Zambia because she needed money and C. was not paying maintenance then. Before their marriage C. had acquired a house in Karoi. However the Matrimonial Home was acquired during

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the subsistence of the marriage. The stand, No. 10924, was acquired in November 1994. She and C. were married on 16 October 1995 but they had started living together in 1993. She had contributed towards the development of the stand. She had a tuck shop on the stand and bought vegetables and fruits which she sold there. When the tuck shop was moved, she operated a barber shop there. She also did some sewing and sold clothes, as well as other goods which she brought from Zambia. She also grew maize and made their own mealie meal.

In cross-examination Edith made the following responses. She first met C. in 1991. Their first child was born in 1992 and C. paid lobola in 1993. C. had had 2 radios when they met and a third radio had been acquired during the marriage. She wanted that radio. C. had 3 children from his previous marriage. They had moved into the Matrimonial Home in November 1995. She had set up the tuck shop in 1995 and she ran it until 1996 when she changed it to a barber shop. The house was virtually finished in 2000. When they moved in, which was in 1995, the walls had been built and the roof put on. However, there were no window panes, the walls were not plastered and the floor was not finished. All 9 rooms had been built. During the construction of the house C. had been out of the country. On that occasion he had been out of the country for 6 months. She had earned money to support the family, but sometimes she had had to go to his workplace and his employer would phone him and then release some of his money. C. could afford to pay the maintenance she was claiming, even though his take-home pay was only around \$72 000, because he gets rent from the tenants in his house in Karoi and he has lodgers in the Matrimonial Home. Furthermore, being a truck driver, he gets paid a night allowance when he sleeps away from home, as well as bonuses when he returns from trips. She had left the children in Zambia because she did not know whether they would be allowed to stay in the Matrimonial Home. When she first returned C. had denied her access, but the police had advised her that she was entitled to stay in the Matrimonial Home. She had asked C. to give her a copy of his

ID card so that she could get passports for the children but he refused, saying they could not stay with him if he was paying maintenance. Last year she had gone to Zambia four or five times to visit the children. She had also visited them this year. The youngest child is staying with her mother and the other two are at boarding school.

C. testified as follows. He is domiciled in this country. His marriage to Edith has broken down irretrievably. The two of them started living together in September 1995 and they were married the following month. In 1993 Edith had not yet acquired the right to reside in Zimbabwe, she merely used to visit here. He paid lobola on 1 September 1995. He had bought a colour TV set, black and white TV set, VCR, electric stove, 2 radios, solar panel and other property before his marriage to Edith. The solar panel had not yet been used. He had bought it for use at his home in the communal area. When Edith visited him in December 1993 he had taken her to see his parents in the communal lands. At that time he had a wife and one child, who was born in 1981. The other two children from his first marriage were born in 1985 and 1990. The eldest is not employed, the second is in Form IV and the third is also at school. He pays the school fees and also looks after his mother. His net pay is \$70 507 a month. He does not get any allowances. The last time he drove on an international trip was in 1994. In that year he was promoted to the position of foreman. He was prepared to pay between \$20 000 and \$25 000 a month as maintenance, even though it would be a strain to pay that much. Edith had never set up a stall to sell vegetables. He had sent her to a dressmaking school in 1997 and she started sewing after that. When Edith left the Matrimonial Home he had given her all the bedding and kitchen utensils. He was willing to let her have the small radio.

As regards the Matrimonial Home, C. said that he had applied for a stand in 1989 and was allocated stand No. 10924 in 1994. It was sold to him for \$10 000 and the agreement was signed on 28 December 1994. When he was working in Kenya he had saved money so that he could build the house. He also sold 2 head of cattle to raise money. The construction had been completed when he and Edith moved in and the roof was on. It was only the floor that had not been finished. The tuck shop had operated for only a few weeks and mainly cigarettes were sold. The barber shop had been set up by a tenant who had not stayed for long. The house has 8 rooms. There was only one tenant in one of the rooms and Edith occupied another. He and his child used the other rooms. Edith was not entitled to a half-share of the Matrimonial Home. She was not entitled to anything but he was prepared to pay her \$500 000 in instalments over 6 to 8 months. If he had to sell the Matrimonial Home he would have nowhere to live. He had no idea of the value of the Matrimonial Home.

As regards custody of the children, C. said that he wanted them to join him and his other children to make one family. Edith stays in the Matrimonial Home and never visits the children in Zambia. He had last

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seen the children when they were still here in 2000. Recently he had gone to Zambia but had been unable to see the children as they were in the fields.

In cross-examination C. made the following responses. He had met Edith in Zambia when he was driving trucks to Zambia and to the Democratic Republic of the Congo. When she visited his parents at their communal home in 1993 she had gone without his knowledge. He did not know why she visited them. He met her only once in 1993 and that was at Victoria Falls. He had written to her in 1995 asking her to come to Harare so that she could be at the site when the house was being built. He needed someone to look after the building materials and there was no-one else but her to help him. However, she did not come until the walls had already been finished. When she arrived the asbestos sheets for the roof were being off-loaded. He had been based in Kenya from December 1993 until June 1994. He had returned to Kenya in February 1995 and stayed there until July 1995. After his return he started to build the house. Shortly after starting the house he went to Edith's communal home and asked her family for her hand in marriage. He bought the materials during the period 7 to 19 July and the house was started on 19 July and finished on 28 July.

C. said that he got \$4 000 a month from rent for the house in Karoi but he has to pay rates so the net income is less than \$3 000. The tenant in the Matrimonial Home pays \$2 000 per room a month but he has to pay electricity and rates.

It is clear that the marriage has broken down and that there is no chance of a reconciliation. As regards the custody of the children, they have been living with Edith or her mother since the parties separated. Although C did say that he would like custody, he has not made a good case for depriving Edith of the custody which she has had *de facto*. That being the case, C. must pay maintenance. I consider that the \$55 000 a month claimed by Edith, although reasonable having regard to the cost of food and other necessities, is more than C. can afford to pay having regard to his other obligations. It would be reasonable, in my opinion, that he pays \$12 000 a month in respect of each child. Edith has not made out a case to establish her claim for maintenance for herself. Insofar as the movable property is concerned, the parties are not in agreement as to what property there is that is available for distribution. However, I consider that it would be fair to order that Edith be given one radio, the black and white TV set, a bed, the electric stove and the sewing machines, if they are still in C.' possession. As regards the Matrimonial

Home, it seems clear to me that it was C. who bought all the materials required for the construction of the house. Edith was present whilst the house was being built and helped by looking after the materials. I consider that she is entitled to a share of the Matrimonial Home but certainly not a half share. I consider, having regard to the period for which the parties have been living together and the assistance Edith gave in connection with the building of the house and the maintenance of the house for C. and their children, that she is entitled to a share equal to one-third of the value of the house.

It is ordered that-

1. A decree of divorce is granted.
2. Custody of the minor children –  
P.T.M. (born [day/month] 1992)  
C.M. (born [day/month] 1995)  
E M (born [day/month] 1999)  
is granted to the Plaintiff with the Defendant having reasonable rights of access.
3. The Defendant shall pay maintenance in the sum of \$12 000 in respect of each child until the child attains the age of 18 years or become self-supporting, whichever occurs first. The maintenance shall be paid on or before the first day of each month.
4. The Plaintiff is awarded, from the matrimonial property, one radio, the black and white TV set, a bed, the electric stove and any sewing machines.
- 5.1 The Matrimonial Home shall be valued. If the parties cannot agree on a value, it shall be valued by a valuer appointed by the parties

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or, if they cannot agree on that point within 5 days, appointed by the Master.

5.2 The Defendant shall, before 31 October 2003, pay to the Plaintiff one-third of the value of the Matrimonial Home:

Provided that if the parties, before 31 October 2003, enter into an agreement relating to the payment to the Defendant of her share of the Matrimonial Home, then payment shall be made in terms of that agreement.

6. Each party shall pay his or her own costs.

*Hungwe & Partners*, legal practitioners for the plaintiff.

*C.K. Mkinya & Associates*, legal practitioners for the defendant.