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MARIA ZENGEYA
versus
TAKAWIRA SEBASTIAN ZENGEYA

HIGH COURT OF ZIMBABWE
SMITH J,
HARARE, 19 - 20 November, 2001 and 4 June, 2003

Mr Mutumbwa for plaintiff
Mr Nhema for defendant

Divorce Action

PARADZA J: Plaintiff and Defendant married each other on 9 November, 1982 at a place called The Range, Enkeldoorn, now Chivhu, in terms of the African Marriages Act, [Chapter 238]. No children were born out of this union. At the time of trial of this matter the parties had not lived together as husband and wife for a period of just over one year. No dates were given as the dates of separation but it is quite evident from the testimony of both parties that their marriage lasted for a period of approximately 18 years.

Plaintiff is employed as a State Registered Nurse whilst Defendant is a retired pensioner having been engaged and worked for the Zimbabwe Electricity Supply Authority for most of his life. At the time of the hearing of this matter defendant was working as a Manager at a company called Powertec Engineering in Harare.

The matter was referred to trial at Pre-trial Conference stage mainly on three issues; namely, the issue of distribution of movable matrimonial property; the distribution of the immovable matrimonial property, known as 7 Elizabeth Windsor Road, Marlborough and another property, Stand No: 19671 Unit F Seke; and whether Plaintiff is entitled to any maintenance. There was general consensus that the marriage relationship between the parties had broken down irretrievably and that no prospects of the resumption of a normal marriage relationship was possible. I will therefore proceed to

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deal with the issues that were referred to trial by consent of both parties at Pre-trial

Conference stage,

The plaintiff gave evidence on matrimonial property that was acquired by the parties during the subsistence of their marriage. She stated that during the subsistence of their marriage a property known as 7 Elizabeth Windsor Road, Marlborough, was purchased. In addition, another Stand known as Stand No 19671 Unit G Seke was bought by the parties as part of their immovable assets. A motor vehicle a Mazda B1600 and another Mazda 626 were also purchased. The registered number for the Mazda B1600 is given as Number 502-228Q. Plaintiff says that this vehicle was given to her by the plaintiff as a gift and she considered that property as hers. She stated in her evidence that she was also claiming maintenance at the rate of \$8 000,00 per month because at the time of the trial she stated that she was unable to work any more because she had lost her employment. It is not clear how she lost her employment. She stated that defendant was working as a Manager at Powertec Engineering and was in receipt of an income. In addition defendant was in receipt of a pension from his previous employer, the Zimbabwe Electricity Supply Authority (hereinafter referred to as "ZESA").

She stated that the Stand in Seke referred to above was the property bought for her own child from a previous marriage. That child's father died in a car accident and monies from her father's estate purchased that Stand for the benefit of that child. She produced a document from the Central African Building Society as an exhibit in her name in support of her evidence that she borrowed money from a building society for the purposes of construction and development on that particular Stand. Her evidence was that defendant was not interested in the development of the Stand but to some extent assisted with supervision and at some stage he did buy some sand and some bricks which cost around \$3 000,00.

During cross-examination plaintiff did concede that indeed defendant did assist her with plumbing, putting up gutters and other smaller things which required attention to the house. In addition, she confirmed that a company known as Marophyn was operating from the premises. The Directors were herself and her daughter known as Rophyn. She denied that any capital to run that company was provided by defendant. Her daughter, Rophyn was born in January, 1977 and the Stand was acquired in 1987 after the death of Rophyn's father. Defendant in his evidence confirmed that he did not have much interest in the property although he says he did help here and there to purchase packets of cement and some bricks. In the same breath he also says he got to know of this property when he received the High Court Summons. As far as he was concerned he was not aware of the existence of this property and he was not concerned about it. I am satisfied that this property cannot be regarded as matrimonial property for purposes of distribution between the parties. It was something that was known between the plaintiff and her daughter and which was purchased by the plaintiff for the sake of benefitting her daughter.

As for the property known as 7, Elizabeth Windsor Road, Marlborough, plaintiff's stated that she did contribute to this property as they regarded this property as their matrimonial home. She states in her evidence that to enable them to purchase this property she sold her property in Gweru known as 26, Grays Road, Ridgemont, Gweru. Of the proceeds of the sale of the Gweru house, she contributed an amount of \$7 000,00 towards a \$12

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000,00 deposit that was paid for the acquisition of 7, Elizabeth Windsor Road. She stated that another \$3 000,00 was paid by her daughter which amount also went towards the payment of the deposit of 7, Elizabeth Windsor Road. Between her and her husband they raised the balance of \$2 000,00 raising a total amount of \$12 000,00 for the deposit of the matrimonial property. The property was being sold for \$35 000,00. The difference between the deposit and the purchase price was to be met through bond repayments which were made by her husband. Therefore as far as the plaintiff is concerned she contributed substantially to the acquisition of this property. She stated that she would be happy to receive 45% of the value of this property and leave 55% with the defendant. Of the Seke property she was prepared to let go an amount of up to 5% of the value of the property.

During the course of cross-examination the defendant offered the plaintiff 20% of the maximum value of the property. The plaintiff refused to accept the offer. As far as she was concerned she was a professional woman who contributed immensely to the upkeep of their marriage and the matrimonial property. She stated that when they married each other nobody had any property. Defendant in particular had just started working at ZESA in 1983 and only had a bed and his items of clothing. Whatever they acquired after that, they acquired together.

In his evidence the defendant confirmed that the property, 7 Elizabeth Windsor Road, Marlborough was purchased by both parties using the then Electricity Supply Commission facility that was in place at the time. The property was worth \$40 000,00 at the time but after negotiations it was sold to the parties for \$38 000,00.

An Agreement of Sale of that property was produced in evidence as

confirming the purchase price of \$38 000,00. Defendant stated that a deposit of \$9 500,00 was required which they paid, firstly, by a cheque of \$3 000,00, which cheque was produced as Exhibit 6, a further amount of \$3 000,00 which defendant said he received from the process of the sale of a motor vehicle, a Peugeot 304 which he sold for that purpose, and a further \$3 500,00 which defendant says was indeed received from the process of the sale of a house owned by the plaintiff in Gweru. Exhibit 4 showed that the deposit that was required at the time was \$10 000,00 and it was signed at the Estate Agency known as Guest and Tanner Real Estate Private Limited on 18th June, 1983. I am satisfied that this property was indeed purchased by both parties with contributions coming from the two parties with the desire to acquire the property which both parties regarded as their matrimonial home.

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A wall was erected subsequently around the property and defendant says he obtained a sum of \$6 000,00 for that purpose. Asked as to whether plaintiff contributed anything further his response was that her contribution was negligible because she was spending most of her time on her own properties. He gave as an example the property that plaintiff owned in Norton which was a Nursing Home. Subsequently she purchased the property in Bluff Hill Harare which she later sold for \$150 000,00. What she did with the proceeds of the sales of those properties he says he did not know.

Under cross-examination the defendant was unable to furnish the court with information about any immovable property which he claimed was removed by the plaintiff. On the contrary, plaintiff stated that most of the property which was removed from the house was taken away by the Sheriff's office for the purpose of a Sale in Execution of a debt they owed.

Under further cross-examination the defendant conceded that he had no claim in respect of the Seke property. In fact he never regarded that property as matrimonial property as he did not know about its acquisition neither did he know about its development. He conceded that he was not responsible for the guttering of the property as it was done by Fort Concrete. A document in support of that fact was produced as an Exhibit.

Defendant then changed his evidence to say that he attended to the lower part of the guttering and not all of it. He also could not deny that payments made to Fort Concrete were made by plaintiff and not by him. Documents in support of that were produced in Court. I am satisfied that defendant does not have any claim as far as the Seke property is concerned. I have already dealt with this above and there is no need to repeat it.

Under further cross-examination defendant conceded that the lawyers who handled the transfer of the property owned by the plaintiff are the same lawyers who subsequently handled the transfer of 7, Elizabeth Windsor Road, Marlborough. Defendant conceded that by looking at the exhibits in Court, the plaintiff did contribute substantially to the acquisition of 7, Elizabeth Windsor Road.

In conclusion I have no difficulty in finding as far as the immovable property is concerned in favour of the plaintiff. She is entitled to received 45% of the current market value of the property, known as 7 Elizabeth Windsor Road, Marlborough. It will be necessary that a valuation of the property be done forthwith by an established valuer agreed to by both parties or failing which, one nominated by the Sheriff of the High Court within a period of 6 months from the date of this Order in order for defendant to pay to plaintiff her share of the value of the property. If that is not done, the Sheriff will be authorised to dispose of that property by private treaty to the parties best advantage for purposes of satisfying this judgment.

As far as the Seke property is concerned I have already ruled that property belongs to the plaintiff and her daughter. I am not making any award whatsoever to the defendant as far as that property is concerned.

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As far as movable matrimonial property is concerned there is not much that was led in evidence as to what exactly the parties had other than what was mentioned in pleadings. I am satisfied that a simple Order directing that each party should keep what is in his or her own possession will meet the justice of this case. Time has gone by and each party has gone on with his or her own life. In the process property has been acquired separately between the parties and to try and make a distribution of movable property would not result in any equitable distribution of that property.

As far as maintenance is concerned plaintiff indicated that she was assaulted heavily by the defendant. The result was that she was incapacitated and has not been able to work since. I have no reason to doubt what she has said. She is a qualified professional person and would work if she had the strength to do so. Defendant has an obligation to pay maintenance to the plaintiff until such time as she remarries or becomes self-supporting whichever occurs first. She claimed \$8 000,0 a month in this day and age that is a reasonable amount of money which may not go far in looking after her life. I have no doubt that she may be forced to seek a variation which indeed I consider she is entitled to. All I can do now is to grant her claim on the basis of what she asked at the time of the trial.

In conclusion I therefore make the following order -

- (1) A decree of divorce is hereby granted by consent;
- (2) As a way of distribution of matrimonial properties the parties be ordered to keep whatever movable property is in their possession at the time of this order as their sole and exclusive property;
- (3) That plaintiff retains as her exclusive property Stand No 19671 Unit G Seke;
- (4) **That plaintiff be entitled to received from defendant an amount equivalent to 45% of the value of the property, at the current market rate, of the property known as 7, Elizabeth Windsor Road, Marlborough. To give effect to this Order, the parties are directed to find a valuer who will effect the valuation of this property within 14 days of this Order. Defendant will then be required and expected to effect the payment to plaintiff of an amount of money within a period of 6 months of this Order that is equivalent to 45% of the value of the property. Should defendant fail to abide by this Order, the Sheriff of the High Court shall be directed**

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to effect a sale of that property by private treaty or to the best advantage of the parties, so that plaintiff receives from the proceeds of that sale an amount equivalent to 45% of the value of the property while defendant receives 55% of the value thereof;

- (5) As for and by way of maintenance, the defendant be ordered to pay an amount of \$8 000,00 per month with effect from the date of this Order as a contribution towards the maintenance of the plaintiff until such time as plaintiff remarries or becomes self-supporting whichever occurs sooner;
- (6) That there be no Order as to costs.

***Mugabe & Partners* , plaintiff's legal practitioners**

***Musonga & Associates*, defendant's legal practitioners**