

CLIVE ROBERT FIELD
versus
BRIDGET ANNE FIELD (nee PARHAM)

HIGH COURT OF ZIMBABWE
MANZUNZU J
HARARE, 20, 21, 22, 23 & 24 January & 17 & 18 February & 13 & 20 March & 20, 21 & 22 April & 10 & 11 June 2020 and 18 February 2021.

Civil Trial - Divorce

F Mahere, for the plaintiff
B Mtetwa, for the defendant

MANZUNZU J This is an action for divorce in which both parties agree that their marriage has irretrievably broken down. There are no children born of the marriage. The last sitting of a pre-trial conference was held on 10 July 2019 before CHIRAWU-MUGOMBA J and three issues were identified as the matter was referred to trial. The issues are;

- a) Whether or not there is fault on the Plaintiff for the end of the marriage and the effect if any of same on the redistribution order of assets of the marriage.
- b) What is a fair and equitable redistribution of the assets of the marriage.
- c) Whether or not the Plaintiff is entitled to costs on a legal practitioner and client scale.

These issues are recorded handwritten by the Judge at the pre-trial conference. They constitute a joint pre-trial conference minutes.

It emerged during the cross examination of the plaintiff that the defendant expressed displeasure in the manner in which the issues for trial were captured. In my view, I do not think it appropriate for a party to express an intention to resile from the issues in the middle of the trial. In the closing submissions the defendant urged the court to take guidance from the parties' independent pre-trial issues. It was also pointed out that issues 4, 4.1 and 5 from the defendant's issues were left out in the joint pre-trial conference minute. The defendant urged the court to take into consideration the combined issues as the joint issues of the parties. This approach will defeat the whole purpose of the pre-trial procedure. Not only will it create confusion as to what issues the court is to determine but is unprocedural in itself. Rule 182 (10) sets the powers of a judge at pre-trial conference as follows;

“(10) Upon the conclusion of a pre-trial conference held before a judge, the judge—

- (a) shall record any decisions taken at the conference and any agreements reached by the parties as to the matters considered; and
- (b) may make an order limiting the issues for trial to those not disposed of by admission or agreement; and
- (c) may give directions as to any matter referred to in subrule (2) upon which the parties have been unable to agree; and
- (d) shall record the refusal of any party to make an admission or reach agreement, together with the reasons therefor.”

If defendant has issues with the pre-trial conference proceedings such should have been resolved before the matter came for trial. The matter was set down for trial based on the issues as per joint PTC minute. The fact that the defendant did not sign it is neither here nor there. The defendant allowed the trial to commence without raising issue with the minute. This court, as a trial court, cannot start acting as if it were dealing with a pre-trial conference. That stage is past and the joint pre-trial conference minute is there to guide the trial court.

BACKGROUND:

The parties met in 1996 when they started a romantic relationship. They married on 31 March 2000 in terms of the Marriage Act, Chapter 5:11. They own six immovable properties, four in Zimbabwe and two in the United Kingdom. They also own movable properties. Their dispute is centred on the redistribution of their assets. As part of the admissions at pre-trial conference the parties agree that the property owning companies are jointly owned.

The parties jointly own the following immovable properties;

- a) No. 3 Windsor Gardens, 10 Windsor Avenue, Newlands, Harare (3 Windsor Gardens)
- b) No. 3 Rowland Square, Milton Park, Harare (3 Rowland Square).
- c) No. 32 Walmer Drive, Newlands, Harare (32 Walmer Drive).
- d) No. 358 Gibson road, Victoria Falls (358 Gibson road).
- e) “V7” 117 Carronade Court N7, United Kingdom (V7).
- f) Penza, Lithorne Hall Middlesbrough, United Kingdom (Penza).

In respect to movables there are various bank accounts, household goods and Zimbabwe Stock Exchange portfolio which shall be dealt with later in this judgment.

PLEADINGS:

Plaintiff issued summons on 5 December 2016 in which he proposed that he receives:

- a) 32 Walmer Drive
- b) 358 Gibson road

- c) Toyota Vigo motor vehicle, and
- d) Half the proceeds of the following :
 - (i) Overseas Investments Accounts
 - (ii) UK Bank Account
 - (iii) SA Bank Account
 - (iv) LOM Bank Account
 - (v) ZSE shares
 - (vi) Fixtures and fittings
- e) That the income for V7 property be applied to the existing mortgage until the property is unencumbered whereupon it be sold and the profits shared equally unless otherwise agreed by the parties in writing.

The plaintiff further proposed that the defendant be awarded:

- a) 3 Rowland Square
- b) 3 Windsor Gardens
- c) Rav 4 motor vehicle
- d) Mazda motor vehicle
- e) Trailer
- f) Shares in ACR
- g) Entire contents of Botswana Bank Account
- h) Half the proceeds of the following :
 - (i) Overseas Investments Accounts
 - (ii) UK Bank Account
 - (iii) SA Bank Account
 - (iv) LOM Bank Account
 - (v) ZSE shares
- (I) That the income for V7 property be applied to the existing mortgage until the property is unencumbered whereupon it be sold and the profits shared equally unless otherwise agreed by the parties in writing.

The summons is silent about the Penza investment.

In her counter-claim the defendant has made the following proposal for redistribution:

- 1. That she be awarded the following as her sole and absolute property:
 - a) 3 Windsor Gardens
 - b) 3 Rowland Square

- c) V7
- d) Penza
- e) 32 Walmer Drive
- f) All amounts in the Botswana and South African Banks
- g) All amounts held in off shore accounts
- h) 50 % share of the income from companies in which she is shareholder for the years 2015 to 2018.
- i) All movables which were at 32 Walmer drive at the time of their separation
- j) To retain all shares bought on ZSE
- k) 50% share of the income of Valley Sun (Private) Limited.
- l) Toyota vigo motor vehicle
- m) Rav 4 motor vehicle

The defendant proposed that the plaintiff should be awarded;

- a) All assets he inherited which include the immovable property at 4 Chidham Close, England.
- b) An undivided half share in 32 Walmer drive.
- c) Upon payment of her share of income in the jointly owned companies that plaintiff retains both companies with defendant signing her shareholding over to plaintiff.
- d) Rav 4 motor vehicle
- e) Remainder of any movables at 32 Walmer drive.

The counter claim remained silent about 358 Gibson road.

WHETHER PLAINTIFF COMMITTED ACTS OF GROSS MARITAL MISCONDUCT:

The defendant in her counterclaim pleaded gross marital misconduct on the part of the plaintiff alleging that the plaintiff has been physically, emotionally and psychologically abusive towards the defendant. Furthermore, that plaintiff failed to treat defendant with love, respect, support, affection, intimacy, companionship and friendship. It was also alleged that the plaintiff hatched conspiracy to dissipate the parties' assets ahead of the divorce.

In his plea in reconvention the plaintiff denied each and every allegation of misconduct and puts the defendant to proof of her allegations. Plaintiff also alleged defendant was alcoholic who lacked spousal support and affection in the marriage.

Who then was at fault for the collapse of this marriage? The plaintiff blames the defendant and similarly the defendant blames the plaintiff. The experience of this court is that where parties are divorcing they blame each other for the failure of the marriage. It is usually the plaintiff's word against the defendant's word.

The onus to prove gross marital misconduct deserving censure in the redistribution of property rests with the defendant. In her evidence the defendant said she discovered in 2015 that plaintiff was involved in an adulterous relationship with one Avril. The plaintiff does not deny such relationship but said he only got into it after their separation in 2016.

The parties' evidence show accusations and counter accusations against each other of wrong doing. Defendant alleged abuse of their joint funds for the benefit of plaintiff's mistress. Plaintiff also alleged defendant withdrew money from their joint account without accounting for it. But the parties agree that their marriage has irretrievably broken down. No one wants to take responsibility for the breakdown of the marriage. The plaintiff blames the defendant for the breakdown of the marriage and goes on to show how he protected himself against defendant's violent behaviour with peace orders and spoliation orders from the courts. As was observed in *Baines v Baines* 1944 SR 135 at 137, "... it is seldom in a matrimonial dispute that the faults are all on one side."

What the parties usually accuse each other of are not the cause of the breakdown of the marriage but rather a sign that the marriage has irretrievably broken down. The defendant's evidence has not proved gross marital misconduct on the part of the plaintiff.

Even if the plaintiff was at fault for the end of the marriage, the law is now clear as set out in the case of *Ncube v Ncube* 1993 (1) ZLR 39 (S) which held that; "since divorce was now based on the 'no fault' concept, the conduct of the parties could play no role in the determination of the distribution of the matrimonial property." The court cited with approval the case of *Wachtel v Wachtel* [1973] 1 All ER 829 (CA) on the division of assets having regard to the conduct of the parties. It stated, "... when the parties come to an agreement that their marriage has irretrievably broken down, what place has conduct in it? The proper approach to adopt is to accept that both parties have contributed to the breakdown and then to get on with the distribution of the assets on that basis. To invite a court to take cognisance of who was responsible for the breakdown after such an agreement, as the appellant requested of the trial court, is to resurrect the old spectre of guilt and innocence and drag the judge 'to hear their mutual recriminations and go into their petty squabbles for days on end, as he used

to do in the old days.’ If that was the intention of Parliament then the concept of the irretrievable breakdown of the marriage in s 5 of the Act is shorn of almost all meaning.”

In casu, the plaintiff’s conduct shall not affect the redistribution of the parties’s assets.

EQUITABLE REDISTRIBUTION OF THE PARTIES’ ASSETS:

a) The Law:

In making an award of the assets of the parties the court is enjoined to apply the principles set out in s 7 (1) of the Matrimonial Causes Act [*Chapter5:13.*] (the Act) This provision gives the court very wide discretion in regards to sharing and distribution of the assets. Factors which the court must take into account are laid down in section 7 (4) of the Act as follows;

“(4) In making an order in terms of subsection (1) an appropriate court shall have regard to all the circumstances of the case, including the following—

(a) the income-earning capacity, assets and other financial resources which each spouse and child has or is likely to have in the foreseeable future;

(b) the financial needs, obligations and responsibilities which each spouse and child has or is likely to have in the foreseeable future;

(c) the standard of living of the family, including the manner in which any child was being educated or trained or expected to be educated or trained;

(d) the age and physical and mental condition of each spouse and child;

(e) the 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;

(f) the value to either of the spouses or to any child of any benefit, including a pension or gratuity, which such spouse or child will lose as a result of the dissolution of the marriage;

(g) the duration of the marriage;

and in so doing the court shall endeavour as far as is reasonable and practicable and, having regard to their conduct, is just to do so, to place the spouses and children in the position they would have been in had a normal marriage relationship continued between the spouses.”

These factors will be considered as and when evidence for each property is analysed.

Several authorities have dealt with division of matrimonial property at divorce. In *Takafuma v Takafuma* 1994 (2) ZLR 103 (S) the court had this to say;

“In dividing up the assets the court must not simply lump all property together and then divide it up in as fair a way as possible. The correct approach is first to sort out the property into three lots, which may be termed "his", "hers" and "theirs". Then the court should concentrate on the lot marked "theirs". It must apportion this lot using the criteria set out in s 7(1) of the Matrimonial Causes Act 33 of 1985. It must then allocate to the husband the items marked "his", plus an appropriate share of the items marked "theirs". It must then go through the same process in relation to the wife. Having completed this exercise, the court must finally look at the overall result and again, applying the criteria set out in s 7(1) of the Act, consider whether the objective has been achieved of placing the parties in the position they would have been in had the marriage continued, insofar as this is reasonably practicable and just, having regard to the conduct of the spouses.”

Because the property in the Takafuma case was jointly owned, the court further held that;

“In the present case the correct approach should have been to start by dividing equally the proceeds of the sale of the jointly owned house, and then to make adjustments in the light of the contributions made by the parties towards the purchase of the house and improvements upon the house, and income received by the parties from the house.” (my emphasis)

The general principle in law is that where a property is jointly owned it is presumed the parties own it in equal shares. There should be justification for the court to award any party more than the 50% share. See *Lafontant v Kennedy 2000* (2) ZLR 280 (S) where the court had this to say;

“Where two persons own immovable property in undivided shares (as is the case here) there must, I think, be a rebuttable presumption that they own it in equal shares. That presumption will be strengthened when (as here) the parties are married to each other at the time ownership was acquired...

The Court cannot move from that position on mere grounds of equity. It cannot give away A’s property to B on the mere grounds that it would be fair and reasonable, or just and equitable, to do so. There must be a more solid foundation in law than that.” (my emphasis).

In casu, the parties are joint owners of the immovable properties hence the starting point will be that each is entitled to a half share of the value of the property.

In *Kanoyangwa v Kanoyangwa 2011* (1) ZLR 90 (H) the court held that;

“Where the immovable property is registered in the joint names of the spouses, this fact must be recognized as a starting point, because where a property is registered in joint names the presumption is that it is held in equal shares unless proved otherwise. In order to take a spouse’s share and transfer it to the other, there ought to be some solid ground for so doing.” (my emphasis)

b) Immovable Properties

I will now turn to the parties’ evidence in respect to each property. The general evidence by the plaintiff in respect to all the assets is that the two acquired them together, administered them together, jointly own them and as such each party must walk away with half share. Despite the properties being jointly owned, the defendant says she singly financed the acquisition of most of the properties to the extent that it is just and equitable that she be awarded all the immovable assets save No. 32 Walmer drive where she proposes that the plaintiff gets half share.

No 3 Windsor Gardens:

The plaintiff said they started their marriage in 2000 at 3 Windsor gardens. The property is owned by Fieham Investments (Private) Limited where each party holds 50% shares. They are joint directors.

The company was registered in 1998 but the property was registered in 2000. On how the property was acquired the plaintiff said the parties borrowed money from the defendant's father which loan they repaid.

The evidence of the defendant differs materially from that of the plaintiff on how this property was acquired. Her position is that the plaintiff made no financial contribution towards the acquisition of the property which she purchased prior to their marriage with the financial assistance of her father. The plaintiff is not a party to the agreement although he assisted in its draft. The plaintiff failed to prove how he contributed towards the acquisition of the property before their marriage. The defendant's story is more probable than that of the plaintiff because she was able to support her evidence with documentary evidence.

This property sits on 328 square metres stand with an estimated value of between US\$260 000 – US\$270 000 as at January 2020. The plaintiff does not dispute that the property be awarded to the defendant as her sole and exclusive property consistent with her counter-claim.

No. 3 Rowland Square

The plaintiff told the court that 3 Rowland Square is held by Flatfish Investments (Pvt) Ltd (Flatfish) and was purchased by the parties between the period 2002 and 2004. The plaintiff and the defendant are the directors of the company and they hold 50% shares each in Flatfish. The plaintiff said the property was purchased from joint funds. The plaintiff proposed that it be awarded to the defendant as her sole and exclusive property.

The defendant's evidence which to me was much more probable than that of the plaintiff was that the original subscribers to Flatfish were her two brothers holding 33% shares each and herself with 34 %. This was the time when this property was bought with no contribution from the plaintiff. She raised her contribution by selling one of her three Nora Court flats. Defendant's brothers later exited from the investment. There can be no doubt that defendant was the primary driver of the investment. In 2003 when Flatfish took title of the property the parties did not hold any joint account up until 2006.

This property measures 1138 square metres and with an estimated open market value of between US\$170 000 –US\$180 000 as at January 2020.The plaintiff proposed it be

awarded to the defendant as her sole and exclusive property consistent with her counter-claim.

32 Walmer Drive

This property was acquired after the parties had opened a joint account. It was purchased in 2006. The property is jointly owned. Plaintiff said the parties bought the property together and equally contributed towards its refurbishments from their savings and investments. The plaintiff lives at this property occupying the cottage with a tenant in the main house. He proposes that the property be awarded to him as his sole and exclusive property because it was through his efforts that they eventually bought the property and jointly registered it in their personal names.

The defendant's evidence was that this property be shared 50-50. She said it was bought out of the proceeds of the sale of one of the properties in Victoria Falls which she owned. She described the plaintiff's contribution as one for doing the paperwork.

Plaintiff's evidence was more probable than that of the defendant as to his contribution towards the acquisition of the property. This is more so because the plaintiff contributed with the paperwork in other of the properties but defendant did not offer 50-50 share. The defendant did not prove that she owned a property in Victoria Falls which was later sold with the proceeds going to purchase 32 Walmer drive.

It does not sound just and equitable for defendant to claim half share on this property when the plaintiff concede that she gets the other first two properties. This is more so when one considers the fact that the parties have been in marriage the last 20 years. While the defendant claims she significantly contributed more than plaintiff through her business enterprises, she cannot say the plaintiff sat there idle with no contribution. While she said she voluntarily agreed for a joint ownership such could not only have been influenced for the sake of love without any return value from the plaintiff. The defendant proposes to get nearly all the assets and leave plaintiff homeless. That is not the spirit of section 7 of the Act, which seeks;

“to place the spouses and children in the position they would have been in had a normal marriage relationship continued between the spouses.”

The property is measuring 4 899 square metres with an estimated value between US\$400 000 –US\$450 000.

No. 358 Gibson road

The plaintiff said that the property was purchased from joint funds and is held in a company called Trails and Trophies (Pvt) Ltd in which the parties hold 50% each. The plaintiff proposed that the property be awarded to him as his sole and exclusive property. Alternatively, he proposed that the property be awarded to the defendant in exchange for the 3 Rowland Square. The approach by the plaintiff is that each party must get at least two of the local properties.

The plaintiff argued that his proposal would achieve fairness regard being had to the duration of the marriage, the direct and indirect contributions of the parties and the fact that the parties own 50% each of the immovable properties.

It was clear from the evidence that the purchase price of this property did not come from the joint account as suggested by the plaintiff. Part payment came from defendant's offshore account as the sellers required offshore payment. However, the plaintiff made indirect contributions. Defendant maintained the property must be awarded to her.

The property sits on 2615 square metres land valued between US\$320 000 – US\$340 000.

V 7 Property

This property in the United Kingdom is jointly registered in the names of the parties. It was acquired through a mortgage. Plaintiff said in his evidence that the property was acquired using joint funds without explaining the source of the funds. A property management company is currently managing the property and leasing it out. Plaintiff proposed that the property be retained until the mortgage is fully paid.

The plaintiff was silent as to whether or not there was need to pay a deposit for the property. However, the defendant's evidence came out clear that a deposit was required for the property. She said such deposit came from her share of the inheritance from her late father. This fact was disputed by the plaintiff who said that he was the executor of her late father's estate and that she did not get any inheritance. Despite this claim by the plaintiff he produced no evidence that indeed he was the executor of the estate.

There is sufficient evidence in favour of the defendant to show that V7 investment was wholly financed from the defendant's funds. There is a write up which plaintiff did on 6 January 2020 to the land developers of V7. The write up referred to source of funds accruing to defendant or from her business. Plaintiff was careful to exclude his 23 000 pounds that was sitting in his United Kingdom account. The write up includes the defendant's inheritance which the plaintiff now says was never there.

However, I must make it clear that V7 was not an inherited property. If it is inherited then it will not be subject of distribution. Nowhere in the pleadings were it pleaded that it was inherited property. The fact that it might have been partly financed from inherited funds does not make it inherited property.

Penza

The plaintiff did not include it as part of the property in the pleadings for sharing. The investment is registered in the parties' joint names. The plaintiff proposes that the investment be divided equally between the parties.

This is an investment wholly financed from the defendant's pension with Veritas. She decided to include plaintiff as a joint owner as she had a belief in the longevity of the marriage. It is an investment for which the defendant seek that it be awarded to her.

Overall analysis of evidence in respect of the immovable properties

The parties are in agreement that No 3 Windsor Gardens and No. 3 Rowland Square be awarded to the defendant. These two properties have a total size of 1466 square metres with an upper open market value of US\$450 000 compared to the 32 Walmer drive which sits on 4866 square metres of land with an upper open market value of US\$450 000. No. 358 Gibson road sits on 2615 square metres land with an upper open market value of US\$340 000. No evidence was led to establish the value of V7 and Penza.

According to the *Lafontant* case, supra, the court,

“ cannot give away A's property to B on the mere grounds that it would be fair and reasonable, or just and equitable, to do so. There must be a more solid foundation in law than that.”

In *casu*, the parties are joint owners of the immovable properties hence the starting point will be that each is entitled to a half share of the value of the property.

In the *Kanoyangwa* case, supra,

“In order to take a spouse's share and transfer it to the other, there ought to be some solid ground for so doing.”

The question is what then constitute a solid foundation or solid ground to justify a transfer of a spouse's share to the other. One of the justifications was laid down in the Takafuma case, supra, as,

“ the contributions made by the parties towards the purchase of the house and improvements upon the house, and income received by the parties from the house.”

The defendant has proved on a balance of probabilities that she was a major contributor in the acquisition of the properties before and during marriage. She had more profitable business enterprises than the defendant. She cannot be expected to have 50-50 share of the property with the plaintiff. Her contribution was far much greater than that of the defendant. But the court will not lose sight of the parties' intention in having a joint registration. The court will have to balance the two. The plaintiff wants to walk out of the marriage as a victorious beneficiary when in actual fact his contribution was on the minimal. His only winning ticket is the joint registration of properties.

Both parties have been beneficiaries to the rentals to the properties although no amounts were quantified. The same goes for the withdrawals from the joint accounts. The plaintiff is a beneficiary of an inherited immovable property 4 Chidham Close, United Kingdom from his late mother which is not subject of distribution but is an asset which the plaintiff already has. The defendant invested her inheritance on V7 which she cannot now claim to be inherited property. Defendant also invested her pension on Penza which the plaintiff laid no claim to in the pleadings.

c) Movables

Plaintiff's evidence was that all money held in the joint bank accounts and potfolios be distributed equally. He singled out the following bank accounts; standard bank Isle of Man accounts, Uk bank accounts, South African Bank Accounts and CABS. He further said each party should keep as his/her sole property the motor vehicles in each party's possession. This would mean plaintiff getting the Vigo and Rav motor vehicles and the defendant getting the Mazda 323 and Rav motor vehicles. Plaintiff also said there was a Prado motor vehicle which was subject of distribution. This turned out that the vehicle was for defendant's sister which the parties bought for her hence is not the parties' asset. Plaintiff further advocated for half share of the rest of the movables.

Pending these divorce proceedings both parties admit making withdrawals from the Standard bank Isle of Man account. Defendant's evidence was clear as to what was withdrawn by each party and they did not account to each other. The plaintiff withdrew US\$10000 and GBP5000. The defendant withdrew US\$3000. This means if this money were

shared equally the defendant is prejudiced of the amounts of US\$3500 and GBP2500. What remains uncertain is the amounts withdrawn against the CABS Platinum account.

Defendant prays an award to her of the balances in all off shore accounts. This is despite the same being jointly owned.

COSTS

The plaintiff in the summons prayed for no costs against the defendant. The defendant in the counter-claim prayed for costs on the ordinary scale against the plaintiff. However, both parties have taken a position in their submissions to claim for costs at a higher scale against each other.

The defendant took the stance that there was gross marital misconduct by the plaintiff warranting costs on a punitive scale against him. On the other hand plaintiff claims the inordinate delay in completing these proceedings was caused by the defendant hence the need to visit her with punitive costs. Courts do not readily grant punitive costs against a party unless there are justified grounds for doing so. Several authorities have set out the principles applicable for such an award. In *Borrowdale Country Club v Murandu 1987 (2) ZLR 77 (HC)* the court held that, “ whilst the courts will not lightly accede to a prayer for an award of costs on a legal practitioner and client scale, such an award will be granted where the unsuccessful party's conduct has been completely unreasonable and reprehensible.” (per head note.) In *Mahembe v Mahembe 2003 (1) ZLR 149 (H)* the court recognized the following as justifying an award of costs on a higher scale;

- a) Dishonesty conduct either in the transaction giving rise to the proceedings or in the proceedings,
- b) Malicious conduct,
- c) Vexatious proceedings,
- d) Reckless proceedings,
- e) Frivolous proceedings.

This is a matter where, in my view, does not justify awarding of costs against either party later on such costs on a punitive scale.

Disposition

1. A decree of divorce be and is hereby granted.
2. (a) The defendant is awarded the following immovable properties as her sole and exclusive properties; No. 3 Windsor Gardens, 10 Windsor Avenue,

Newlands, Harare, No. 3 Rowland Square, Milton Park, Harare and Penza, Lithorne Hall Middlesbrough, United Kingdom.

(b) The plaintiff is awarded No. 32 Walmer Drive, Newlands, Harare as his sole and exclusive property.

(c) The plaintiff and defendant shall within 90 days from the date of this order ensure that the immovable properties are transferred and registered in their names and should any party fail to take action within a period of seven days from a request being made, the Sheriff of the High Court be and is hereby authorised to sign the necessary documents for transfer of immovable properties.

(d) The plaintiff and the defendant shall each bear their own transfer costs.

3. Each party is awarded 50% share in No. 358 Gibson road, Victoria Falls.

3.1 The property shall be valued within ninety days from the date of this order by a valuator agreed to by the parties within fourteen days from the date of this order failure of which the Registrar of the High Court shall appoint a valuator from the approved list.

3.2 The plaintiff and the defendant shall meet the valuation costs equally.

3.3 The plaintiff and the defendant shall each have a period of sixty days from the date of the valuation report to exercise an option to buy each other out of their respective 50% share.

3.4 Should the plaintiff and the defendant fail to exercise the buy-out option within the stipulated time frame, the property shall be sold by private treaty by an estate agent agreed to by the parties within fourteen days from the last day of the exercise of the option failure of which by an estate agent appointed by the Registrar from the approved list and the net proceeds shall be divided equally between the plaintiff and the defendant.

3.5 The plaintiff and the defendant shall meet the costs for the sale equally.

3.6 Should any party fail to sign the necessary documents to pass transfer for the buy-out option or sale by private treaty option, the Sheriff of the High Court be and is hereby authorised to sign all such documents.

4. The defendant is awarded 75% share and plaintiff is awarded 25% share in "V7" 117 Carronade Court N7, United Kingdom.

- 4.1 The property shall be valued within ninety days from the date of this order by a valuator agreed to by the parties within thirty days from the date of this order failure of which the authorised official with the Superior Courts in the United Kingdom shall appoint a valuator.
- 4.2 The plaintiff and the defendant shall meet the valuation costs equally.
- 4.3 The plaintiff and the defendant shall each have a period of ninety days from the date of the valuation report to exercise an option to buy each other out of their respective 75/25% share.
- 4.4 Should the plaintiff and the defendant fail to exercise the buy-out option within the stipulated time frame, the property shall be sold by private treaty by an estate agent agreed to by the parties within fourteen days from the last day of the exercise of the option failure of which by an estate agent appointed by an authorized official with the Superior Courts in the United Kingdom and the net proceeds, less any mortgage obligations, shall be divided equally between the plaintiff and the defendant.
- 4.5 The plaintiff and the defendant shall meet the costs for the sale equally.
5. Each party shall transfer to the other all shares in companies whose assets have been awarded to the other party and each party shall resign from each such company.
6. (a) The plaintiff be and is hereby awarded as his sole and exclusive property, a Toyota Rav and a Toyota Vigo Motor vehicles (already in his possession).
(b) The defendant be and is hereby awarded as her sole and exclusive property, a Toyota Rav, a Mazda 323 motor vehicles and a trailer (already in her possession).
(c) Should any party fail to sign the necessary documents to pass transfer the Sheriff is hereby authorised to sign all such documents.
(d) The plaintiff and the defendant shall each bear their own transfer costs.
7. The plaintiff and defendant shall each retain as his/her sole and exclusive property all movables in their possession save that which is specified in paragraph 12 of this order.
8. The plaintiff and the defendant are awarded 50% each of the balances in the following bank and investment joint accounts:
 - a. Standard Bank Isle of Man Accounts
 - b. CABS Platinum Account
 - c. ZSE portfolios

9. The plaintiff and the defendant are awarded 50% each of the balance in the following bank and investment account;
 - a. UK bank account (held in the plaintiff's name).
10. The defendant is awarded any balances in the South African and Botswana (FNB) bank accounts.
11. The plaintiff shall pay the defendant amounts of US\$3500 and GBP2500 being her share of the unaccounted funds withdrawn by the plaintiff from the Standard bank Isle of Man account.
12. The following property of sentimental value is awarded to each party;
 - (a) The plaintiff is ordered to surrender to the defendant the following property;
 - (i) Furniture held at 32 Walmer drive inherited from the defendant's late cousin
 - (ii) A small buffalo sketch painting by Larry Norton
 - (iii) Noel art painting with palm trees.
 - (iv) A table given to defendant as a wedding gift.
 - (b) The defendant is ordered to surrender to the plaintiff ;
 - (i) A piece of art he received as a gift at his 40th birthday.
13. The parties may by consent vary any time frames indicated in this order. In the event that they fail to agree, the aggrieved party may approach the court for a variation.
14. Each party shall bear its own costs.

Matizanadzo and Warhurst, plaintiff's legal practitioners
Mtewa and Nyambirai, defendant's legal practitioners