

SIJABULISIWE HUNDA (NEE MKANDLA)

Versus

ESMAEL HUNDA

IN THE HIGH COURT OF ZIMBABWE
BERE J
BULAWAYO 22, 23 & 24 MAY 2006

Ms Vundhla for plaintiff
M Ncube for defendant

Default Judgment - Divorce

BERE J: After hearing evidence from the plaintiff assisted by her counsel I made the following order on 23 May 2006;

- a) That divorce be and is hereby granted;
- b) That the sharing of the movable property jointly owned by the parties (minus the Nissan Sunny currently in the hands of the defendant and bearing registration number 717-532A) done by the parties and as more fully reflected in the plaintiff's declaration be and is hereby confirmed;
- c) That the plaintiff be awarded as her exclusive property stand number 20995 Pumula South, Bulawayo;
- d) That in addition to the movables that he already has, the defendant be declared to be the sole owner of a Nissan Sunny motor vehicle bearing registration number 717-532A;
- e) That each party bears his/her own costs.

I did indicate then that my reasons would follow. Here are my reasons.

The parties were married to each other on 11 December 1992 and ever since their marriage has been on the rocks largely because of the plaintiff's alleged failure to bear children. The plaintiff attributed this to be a medical problem which rendered her barren.

It was the plaintiff's undisputed evidence that her barrenness led the defendant to persistently

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and consistently abuse her and when she could take in no longer, she decided to institute divorce proceedings.

It is not my intention to dwell a lot on the irretrievable breakdown of the parties marriage as it is clear from the pre-trial conference conducted on 18 July 2005 before my brother judge NDOU J that the parties were basically agreed on the divorce itself.

The court's task was further made easier by the fact that the parties have on their own been able to share to their satisfaction the bulk of the movable property.

The only issue that required determination was the distribution of stand number 20995 Pumula South, Bulawayo and a Nissan Sunny motor vehicle bearing registration number 717-532A.

The defendant having defaulted to attend court and the court having determined it appropriate to deal with the matter in the defendant's absence, the court had to rely on the evidence of the plaintiff in determining the issue before it.

The plaintiff gave a fairly detailed account of how she personally used her resources to acquire both the stand and the Nissan Sunny motor vehicle.

It was the plaintiff's very clear evidence that throughout the parties' marriage she has been earning much more than the

defendant and that she has always been personally responsible for the welfare of both parties.

The plaintiff tendered to court her bundle of documents which the court made part of the court record.

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Through her counsel, the plaintiff produced exhibit 2, which exhibit details the acquisition of stand number 20995 Pumula South, Bulawayo.

The plaintiff further produced exhibits 3 to 9 which showed how she made various payments by instalments towards the acquisition of the stand. She told the court that in order to augment her finances, she had to borrow money from her bank to assist her in the acquisition of the property. There was nothing that came from the defendant.

The plaintiff further told the court that the Nissan Sunny motor vehicle which she has offered to the defendant in her pleadings originated from her Mazda 323 motor vehicle which she had purchased with funds she acquired from demutualization of her shares with Old Mutual. Again, when she did that, she did not get any assistance from her husband, the defendant.

The defendant had suggested in his pleadings that it would be just and equitable that both the Pumula South stand and the Nissan Sunny be sold and the proceeds shared equally between the parties.

The plaintiff's position was that the just and equitable thing to

do was to give her the exclusive ownership of the Pumula South stand with the defendant being offered the Nissan Sunny motor vehicle.

In support of her position, the plaintiff told the court in very clear terms that she had personally invested almost all her pension contributions for the 12 years that she had worked as a civil servant towards the acquisition of the stand in question. In addition to that she also traded in her motor vehicle as part payment for the Pumula South stand.

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The plaintiff's evidence was well given. She had documentary evidence to support virtually everything she told the court. It is extremely doubtful in my view that even if the defendant had availed himself for trial, he would have been able to offer any meaningful challenge to the story told by the plaintiff. It was well told. The court comfortably accepted her evidence.

It is important for parties in divorce proceedings, particularly where the debate centres on equitable distribution of matrimonial property, for parties to know that "just and equitable" distribution of property has no mathematical formula. It is an approach largely based on the court's determination of the direct and indirect contributions made by each party in the acquisition of family assets.

A party must be able to demonstrate to the court her manner of contribution to the family assets in order to assist the court

determine what percentage should be due to her/him. A party cannot blindly demand to get 50% or whatever percentage of the family assets without supporting that claim with tangible evidence.

After analysing the evidence tabled by the plaintiff and also making a rudimentary assessment of the defendant's pleadings (since the defendant was in default) I felt inclined to make the order which I made.

Dube & Partners, plaintiff's legal practitioners
Cheda & Partners, defendant's legal practitioners