

LARA JANE DUNCAN
versus
IAN CAMERON DUNCAN

HIGH COURT OF ZIMBABWE
MWAYERA J
HARARE, 8, 9, 10, 16, 17 and 24 November 2016, 8 December 2016,
20 February 2017 and 30 March 2017

Civil Trial (Family Law)

T Mpofu, for the plaintiff
L Uriri, for the defendant

MWAYERA J: The circumstances of this case remind me much of The Wife of Bath's Tale by Geoffrey Chaucer¹. The wife in there proudly pronounced that:

“husbondes at church adoore I have had fife.” Meaning having already married five husbands or having already married 5 husbands at church. She naturally took one after the other. According to the wife of bath 3 of the husbands were good and 2 were bad.

In this case the plaintiff legally divorced her former husbands in a civilized manner as is expected of human beings. When the love relationship has come to a dead end, they do not have to kill each other but pursue the legal route out. The law in its wide encompassing way does not limit the number of times one can get married and equally get divorced as long as it is within the legal precincts. The parties in this divorce matter agreed that their marriage had irretrievably broken down to such an extent that there are no prospects of restoration of a normal marriage relationship. Further on ancillary issues, the parties who married in 2009 agreed that the plaintiff will be the custodian parent while the defendant is entitled access. The parties also agreed that the defendant was to pay reasonable maintenance for the couple's children. At the trial hearing, the parties further agreed on proprietary rights as it was evident the plaintiff did not persist with

¹ The Wife of Bath's Tale by Geoffrey Chaucer (Canterbury Tales 1387 and 1400)

proprietary claims except the matrimonial home which she sought to be registered in the name of the couple's children.

It was apparent that the following issues are contentious:

1. The actual access to be exercised by the defendant in other words what constitutes reasonable access to the children.
2. What constitutes fair maintenance for the children.
3. Whether or not the plaintiff was entitled to post divorcé maintenance and the quantum thereof.
4. What should happen to the matrimonial home.

Given the undisputed central aspects of divorce and ancillary issues identified the matter was fairly straight forward as the issues had been clearly narrowed down at Pre-trial Conference and further narrowed at trial hearing. I will not make much ado of nothing by regurgitating the property initially claimed by the plaintiff but abandoned at the trial hearing. The plaintiff testified in the case and did not adduce further evidence from other witnesses. The plaintiff, I must mention fared fairly well given the brutal and agonizing line of questioning by the defendant's counsel. The vicious and brutal stance which is refueled even in the closing submissions was to a greater extent uncalled for given the plaintiff abandoned her claims on property acquired prior to the marriage. One need look at the closing submissions paragraph:

- “1. Lara Jane Duncan craves unjustified enrichment.”
2. She pursues undeserved windfall. This invariably follows a simple formula marriage, child birth, divorce, enrichment. This cannot be wished away on the basis that it is inadmissible similar fact evidence.
3. She is young and beautiful. She attracts men of means. She has in her short life

The same venom was exhibited during cross-examination even on common cause and admitted aspects. She was even asked the cost of a tattoo on her upper arm in an unpleasant manner to show her extravagance. The tattoo turned out to have cost \$30-00.

The plaintiff, despite the bruising and long cross-examination was clear that she had two children with the defendant and that she required maintenance in the form of medical aid, school fees and general maintenance. She was at the time of trial in receipt of \$1 860-00 maintenance per month. She claimed \$1 500-00 per month maintenance for herself or alternatively payment of a lump sum \$300 000-00. It was apparent from the plaintiff's testimony that when she first met the defendant she was gainfully employed at Lomagundi College and that she only terminated

employment so as to move from Chinhoyi to Harare. This was by arrangement with her husband. Since 2010 she has been staying in the defendant's house in Harare and has been staying in the matrimonial home since then. It was also clear from the evidence that she was in charge of the children's school run and that the husband bought saloon equipment for her. The saloon was at the house. The plaintiff was at times into marketing for Honey Jewellery. To this end it was clear the plaintiff was in a position to work and contribute to her upkeep as well as the children's upkeep. It was evident from the plaintiff's testimony that she did not bring much into the marriage in so far as property was concerned. The plaintiff did not mince her words in stating that the defendant was a man of substance when she got involved with him. She brought in bed linen and curtains which were taken to the defendant's resort house in Mozambique. She attended to decoration and upkeep of the resort house and that the contribution was much in service provided and not actual money. The plaintiff was generally a truthful person who did not seek to exaggerate her direct and indirect contribution. She, as the wife of the defendant, contributed to the wellbeing of the couple's children and the home. The plaintiff's evidence was straight forward and easy to follow. She did not seek to cover up her past interactions with other men and the claims for maintenance after divorce. There was nothing to criticize about the manner the plaintiff testified. Her claim for personal maintenance however appeared unreasonable as it was motivated by her view that the defendant was rich as such he ought to pay her huge maintenance. The notion of maintenance is not to induce a dependency syndrome but to ensure that the person responsible for maintaining is forever maintains depending on their ability. In so far as the children are concerned both parents have an obligation to maintain the children. Constitution 58 (1) (d) s 81 is instructive:

“Every child, that is to say every boy and girl under the age of eighteen years, has the right to family or parental care, or an appropriate care when removed from the family environment.”

Spouses owe each other a duty of care of the other but such duty should not be viewed to mean bringing undue hardship on the other. Section 26 on marriage spells out expectations. Section 26 reads:

“The state must take appropriate measures to ensure that

- a)
- b)
- c) There is equality of rights and obligations of spouses during marriage and at its dissolution.

- d) In the event of dissolution of a marriage, whether through death and or divorce, provision is made for the necessary protection of any children and spouses.”

I propose to discuss the maintenance contributions latter, suffice to mention at this stage, that the plaintiff's evidence in so far as post-divorce spousal maintenance was concerned was tainted with exaggerations and unrealistic figures. Another point of criticism in so far as the plaintiff's case was concerned is the failure to call a witness from childline yet the bundle of documents presented by the plaintiff included a report from one Ratidzo Moyo the childline officer. In my view such conduct was meant to leave the court to speculate on the alleged sexual molestation. The speculation would in turn be destructive in so far as access rights of the parties were concerned. The plaintiff to this extent was not open with the court either because there was no substance in the report or that the plaintiff conceded there was no meaningful basis for the insistence of supervised access being imposed on the defendant. Upon considering the report at close range and Ratidzo Moyo the children's social worker's evidence (the social worker testified at the behest of the defendant) it was apparent there was no conclusive evidence of child sexual molestation warranting a denial of access rights to the defendant. The witness Ratidzo Moyo was candid with the court in so far as she spoke to the report which followed the children being brought by their mother the plaintiff a report of alleged abuse. The report was inconclusive according to the witness.

The defendant also called Ernest Kageler an unregistered psychologist. Ernest Kregle was honest with the court that he assessed the defendant on the basis of information supplied to him by the defendant. He concluded that the defendant did not have any psychological problem which would militate against him as a parent to have access to the minor children. Nothing much turns on his evidence as his report was based on specified defined parameters. The defendant also called one of the former husbands of the plaintiff one Du Cladier De Curac. Given the common cause aspects the witness was not of assistance to the defendant's case or to the court. There was clear hostility between the witness and the plaintiff as they have a pending court battle arising from a matrimonial matter. It was apparent his evidence was an attempt to smuggle in similar fact evidence. Such evidence was not necessary given the common cause aspects. The witness did not hide the bitterness that existed between himself and the plaintiff. His testimony was of no value to the defendant's case.

The defendant was the first to testify in his own stead. The defendant's evidence was clear and on common cause aspects such as irretrievable break down, custodian parent, right to access and obligation to maintain children tallied with the plaintiff's evidence with slight variation on quantum of maintenance for children and what constitutes reasonable access. The defendant was clear that he acquired most of the assets prior to the marriage to the plaintiff. Although he was non-committal on figures he alleged that the plaintiff made direct and indirect contributions in their matrimonial home. He to a great extent agreed with the plaintiff that she was involved in the school runs and her property from Chinhoyi was taken to the Mozambique resort. The defendant was in agreement with the plaintiff keeping the movable property at the matrimonial house and was in principle clear on the obligations that lay on him in so far as the upkeep of his children was concerned inclusive of aspects like shelter, education health and general upkeep. Given the property and income at his disposal the plaintiff's evidence in so far as maintenance of the children was exposed as unrealistic. This is moreso when one considers that maintenance is premised on the means of the responsible person. In general, the defendant was open and sincere with the court but could not distinguish disdain of the plaintiff over their fallen relationship and the needs of the children whom the law, the constitution and legislative instruments clearly seek to protect, such that there is minimal disruption of their life style post divorce.

The best interests of the children come into the fore upon considering divorce and ancillary issues where there are minor children at stake.

The defendant laid bare much to his credit, the properties he owned and he put the court in his confidence in so far as his financial circumstances are concerned. This I must point out is in stark contrast with the plaintiff who claimed \$1 500-00 per month maintenance for herself or lump sum of \$300 000-00 without outlining her expenses and needs. Further the plaintiff did not disclose the income at her disposal other than that she saved US\$11 000-00 maintenance for her children from previous marriages.

The defendant's asset standing was laid bare inclusive of property acquired prior to the marriage as following:

1. Shares in a house boat in Kariba.
2. Cottage at Lake Chivero.

3. Boats
4. Toyota CX
5. Toyota 4 x 4
6. Savings \$100 000-00
7. House in Avondale
8. Furniture and equipment
9. Commercial property in Ruwa
10. 1962 Aeroplane
11. Beach house in Mozambique

Of these properties 1 – 6 were said to have been sold to finance living in expenses and to capitals of Family Business Delstyl. It also emerged from the defendant's evidence and partly the plaintiff's evidence that the following property was acquired during the subsistence of the marriage.

1. Beech Baron Aeroplane
2. Opening of Delstyl Company
3. Opening of Gasteal in South Africa
4. Tiling and plumping of Mozambique Resort House
5. Mitsubishi Pajero
6. Speed queen nasty marine
7. Camping refrigerator
8. Double door refrigerator

The debts owed by the couple and at couple's companies were also outlined side by side with the available assets with approximate value being given by the defendant.

Avondale House	150 000-00
Ruwa Commercial Property	200 000-00
Mozambique Resort	50 000-00
CABS	120 000-00
Offshore Account	9 500-00
Gasheat Company SA ZAR	17 000-00

Piper Comanon Ascort	25 000-00
Beech Barron, aircraft	40 000-00

Expenses

Owed to Angleloz	25 000-00
Owed to Duncoms Moes	50 000-00
And Delstyle	
Maintenance on planes	13 000-00
Total	88 000-00

Owed to defendant's poet	ZAR 75 000-00
Owed to AAN Bredekop	ZAR 90 000-00
Owed to Roy Smith	ZAR 15 000-00
	ZAR 180 000-00

Also worth noting from the evidence of the defendant is the fact that the Ruwa property generates an income of between \$2 000-00 and \$2 500-00 per month in rentals. Further the defendant is a business man and mechanic in South Africa and earns very little given his living expenses in South Africa of a total of about \$8 008-50. The defendant further gave evidence to the effect that he is not on medical cover and has health challenges. I must commend the defendant for laying bare asset standing and financial standing given the nature of the matter for which the court is called upon to come up with a disposition on proprietary and maintenance rights. I subscribe to the sentiments echoed by the court in *Shenje v Shenje* that:

“The task of assessing a fair division of property can be difficult enough when appropriate evidence is lead of wealth, asset and means of the parties. It is potentially much more difficult when a party seeks to conceal his circumstrate.”

In this case the plaintiff was economical with evidence on her financial standing much to her detriment. I deliberately touched on property acquired prior to the subsistence of marriage and that acquired during the subsistence of the marriage because the wording of the Matrimonial Causes Act [*Chapter 5:13*] is all inclusive of spousal assets. Section 7 (1) herein after referred to as the Act reads:

“subject to this section, in granting a decree of divorce, judicial separation or nullity of marriage, or at any time thereafter, an appropriate court may make an order with regard to:

- (a) the division, apportionment for distribution of assets of the spouse including an order that any asset be transferred from one spouse to the other”

See *Gonye v Gonye* 2009 (1) ZLR 232 in which MALABA JA (as he then was) made it clear assets of spouses acquired before, during and on separation fall for consideration for distribution or division. It is my considered view that the legislature in its wisdom used the term assets of the spouses and not matrimonial property for the obvious reason that spouses owe each other a duty of care during and after dissolution of marriage. To confine distribution to property only acquiring during the marriage would bring about the obvious gap in the life style the spouses would have been used to during the subsistence of the marriage relationship. The spirit of the Matrimonial Causes Act to ensure that reasonable, practical and just division of property is attained is in conformity with the constitutional provisions on Family and Marriage Rights. In particular the duty of care and equal obligations highlighted in s 26. The words of GILLESPIE J in *Shenje v Shenje* 2001 (2) ZLR 160 H in relation to equitable distribution still ring true in so far as one seeks to attain equitable distribution which would place the parties into the same position they would have been had a normal marriage relationship continued. In the *Shenje* case GILLESPIE J had this to say in relation to the provisions of s 7 (4) of the Act:

“In deciding what is reasonable, practical and just in any division, the court is enjoined to have regard to all the circumstances of the case. A number of more important and more usual circumstances are listed in the subsection. This list is not complete. It is not possible to give a complete list of all possible relevant factors. The decision to property division order is an exercise of judicial discretion, based on relevant factors aimed at achieving a reasonable, practical and just division which secures for each party the advantage they can fairly expect from having been married to one another, and avoids the disadvantages to the extent they are not inevitable of becoming divorced.”

In the circumstances of this case the whole spectrum of the life style of the parties and children has to be looked at closely so as to come up with a just and equitable order. None of the parties should be disadvantaged where it is practically possible to come up with a just and equitable decision which would not be disruptive to the spouses and children’s life style they are accustomed to. See *Moroney v Moroney* HH 109 – 2010 and *Usayi v Usayi* 2003 (1) ZLR 684. What comes out clearly in all these cases cited is the fact that the court has a wide discretion which ought to be exercised judiciously by looking in to the wide spectrum so far as proprietary

issues are concerned as to ensure as far as practically possible that a fair and just disposition is reached. It is not proper to enrich or impoverish either of the spouses.

The underpinning principle to the division, distribution and apportionment of property being what is just and equitable in the circumstances of a particular case. It is not in dispute that the defendant's contribution in so far as property issues are concerned outweighs the plaintiff's contribution. Sight should however, not be lost that the plaintiff made valuable contribution in the upkeep of the home and taking care of the children. Her contribution as a mother and wife cannot be wished away. The parties have agreed she be the custodian parent and naturally it follows the children and mother require shelter. The family was used to the specific lifestyle given their opulent background. In considering the distribution, division and apportionment of property the court has to try as far as it is practically possible to place the parties in circumstances they would have been in had the marriage persisted. The children in this case are minors and their best interests have to be safe guarded. It is traumatic for them to grow up in a broken family and the trauma will further be worsened by a drastic change to a completely different environment than what they are used to. The children should not be visited by hardship where it can be avoided because they certainly are not part to the divorce but their rights are eroded by the divorce.

Section 4 of the Matrimonial Causes Act gives guidelines which among others fall for consideration in a wide and all-encompassing manner in a bid to come up with a just and fair decision in a matrimonial matter. Section (4) states

“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

1. (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...
(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 at the spouses or 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.”

When dealing with divorce and ancillary issues, as in this case, the guidelines laid out in s 7 (4) of the Act and circumstances of the case fall for consideration in the court’s exercise of its discretion, in coming up with an appropriate order. The factors in my view, have to be considered cumulatively. In this case the plaintiff is to be the custodian parent and she thus requires accommodation for herself and children. The parties have been in marriage for about 7 years and sired two children. The defendant accepted the plaintiff contributed to the marriage and rated the contribution between 10 and 15%. It is important to note contributions by spouses whether direct or indirect are important for the marriage relationship. The plaintiff although in a lesser proportion contributed directly and indirectly. The correct approach should be to combine her direct and indirect contributions so as to attach a value to the contribution. The plaintiff’s contribution of taking care of household chores even supervising the maids or house help cannot go unnoticed. Further making school runs and being a mother cannot be ignored. See *Masiwa v Masiwa* 2007 (1) ZLR 167 and see also *Freddy Chinyavanhu v Letwin Chinyavanhu*, HH 156-09 *Usayi v Usayi. supra*

Given the circumstances of this case, it is clear the defendant does not stay in the Avondale matrimonial home which is occupied by the plaintiff and the children. The defendant stays in South Africa and has properties acquired before the marriage as earlier outlined. Even though it is legally permissible to transfer assets from one spouse to the other in this case upon considering the parties contributions general needs and futuristic needs I do not deem it just and equitable to distribute, share and or apportion all the other assets except the matrimonial home. The matrimonial home is the home which the minor children and the plaintiff the mother are currently staying in. It is apparent from the evidence the plaintiff and children have need for the shelter and it is equally clear the defendant has no dire need for the Avondale home. What emanated from evidence and closing submissions over the matrimonial home appeared to have been motivated by animosity between the parties. The demand for the matrimonial house by the defendant and offer to pay 40% of rented accommodation would be detrimental to the children and not in their best interests. Clearly the defendant stated he has already given that house to his children in a will. The drive to push the plaintiff and children to rented accommodation given the

defendant has no immediate need for that shelter is unjustified in the circumstances. The plaintiff and the children are accustomed to the Avondale home and have need for shelter. See *Kwedza v Kwedza* HH 34/12 wherein CHITAKUNYE J remarked

“It is only fair whatever, apportionment or distribution is done and does not burden the defendant so much that it is left without accommodation.”

The above sentiments are applicable to the plaintiff and children who stay at the Avondale matrimonial home given the property and finances at the defendant’s disposal and that to the plaintiff’s disposal on the other hand, it is in my view just and equitable that an order accommodative of the plaintiff and children’s shelter needs ought to be made. Section 7 of the Act is instructive

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

It is given the plaintiff is the custodian parent. The defendant has a right to access his children. From evidence it was deduced the plaintiff and the defendant concentrated more on their own best interests and not the children. The fault finding on each other as not being a good parent was perpetuated more by hurt feelings as opposed to reason. Both the plaintiff and the defendant seem to be of outgoing nature and none can be described as better placed to supervise, access of the children by the other. Emotions seem to have taken over reason as evidenced by counter accusations of feeding the toddler then, with beer and being out with minors in the company of an alleged boyfriend. The fact that the plaintiff laid flimsy allegations of sexual molestation of the minor children at a public wedding gathering remained unsubstantiated. Given the emotive process of separation and divorce, in the absence of proof of one parent being unsuitable to access the children without supervision, there is no justification in denying the defendant reasonable access to his children. The children have to be sustained and maintained for their welfare, medical and general upkeep has to be provided. Both the parents are still young and capable of providing for the children. The order for maintenance will thus take into account that both parents will contribute towards the maintenance of the children. The defendant cannot be exonerated from paying maintenance simply because the plaintiff was in receipt of maintenance from her previous marriages. That is an obligation for the former husbands *visa viz* their children and has nothing to do with the plaintiff and defendant’s obligations of maintenance

visa viz the couple's children. A lot of evidence about the plaintiff's past marriage was referred to with a view to tarnish the plaintiff's image. This court will not be blinded by the smoke raised as clearly the plaintiff and defendant entered into their marriage knowing the plaintiff was a divorcee. Being a divorcee would not disentitle children or even the spouse to maintenance in deserving circumstances. The children will thus be maintained by both parents.

The plaintiff claimed maintenance for herself in the sum of \$1500-00 per month or lump sum of \$300 000-00. I must hasten to mention that spouses in a marriage have equal obligations as they owe each other duty of care during and at dissolution of marriage. In deserving circumstances an award follows for the upkeep of the disadvantage spouse. Post-divorce spousal maintenance is not granted on the mere asking. One has to satisfy the court there is need for the maintenance and that the other spouse is capable of paying as they have the means and that the spouse claiming cannot sustain themselves. These factors ought to be considered cumulatively. Maintenance is not a way of fixing or getting at the other party from a collapsed marital relationship. It is meant for sustaining the other spouse who is incapable of sustaining himself. The central aspect is what is just and equitable in the circumstances. Again calculated with a view to retain the parties in a position they would have been in had the marriage continued or subsisted. The plaintiff in her evidence conceded she is still young. She is capable of working and she has saloon equipment which she can put to good use to earn a living and also argument the general maintenance of her children. The plaintiff has some savings locally and in an offshore account. Although she was economical with evidence on the financial standing and expenses one could not fail to deduce that she is capable of sustaining herself to more or less the same standard.

This is particularly so when one considers the totality of the circumstances of the case and the award to be made where the bulk of the maintenance for the 2 children is to be shouldered by the defendant. Further, accommodation is to be provided and also the costs of these proceedings have been contributed by the defendant by virtue of a contribution order under HH 651/16. Bearing in mind the advent of equal rights society is to disabuse itself of the notion that when we talk of maintenance it is only Adam's descendants and not Eve's descendants who have a duty to maintain. The constitution is clear on equal obligations and duty of care. Maintenance is a preserve for the fairly advanced in age who for one reason or the other can no

longer fend for themselves. As stated in *Rabvukwa v Rabvukwa* 2004 ZLR 53 and *Chiomba v Chiomba* 1992 (2) ZLR 197. Maintenance is not a life bread ticket. In *Chiomba case supra* MANYARARA JA stated:

“It remains to be said with the emergency of the working wife and woman’s liberation the attitude of the courts towards award of maintenance has been changing the world over permanent maintenance is reserved for elderly wife who has been married to the husband for a long time and is too old to earn a living”.

This reasoning in my view is progressive and well aligned to the Zimbabwean Constitution which emphasises equality of obligations and duty of care spouses owe each other in marriage and upon dissolution of marriage.

The plaintiff without any substantiation or outline of expenses wishes to be maintained to the tune of \$1500-00 per month or to get \$300 000-00 lump sum. One cannot help but read a young woman seeking to enterprise as an entrepreneur by virtue of divorce. In the same manner that the plaintiff should not be disadvantaged by divorce so should the defendant not be disadvantaged. The claim would amount to punishing the defendant forever marrying the plaintiff and may be even pushing him for the divorce occurring. It is common cause it takes two to tango and whenever, there is fire if the smoke gets heavy then the parties are better off out than wait for the smoke to cloud their eyes leading to fatal consequences. Maintenance is a noble way of ordering a responsible person who is capable of maintaining the incapable (my emphasis) one to maintain the other. Where there is no need for maintenance the award ought not to be granted. The plaintiff is capable of self-sustaining and in the absence of justification for the unreasonably huge claims I find no justification or inclination to grant the maintenance as claimed.

The parties who entered into marriage on 10 June 2009 have agreed their marriage has irretrievably broken down. They have agreed they have irreconcilable differences which are not compatible to continuance of a normal marriage relationship and as such require exit as a solution. Of necessity a disposition on the marriage and ancillary issues has to follow. Upon considering the totality of the evidence adduced the following order is issued.

It is ordered that:

1. A decree of divorce be and is hereby granted.

2. The plaintiff shall have custody of the minor children of the marriage namely Caltin Duncan (born on 6 January 2010) and Taige Duncan (born on 28 March 2012)
3. The defendant shall have reasonable access to the said minor children as may be agreed upon by the parties from time to time subject to the following minimum conditions.
 - 3.1 The defendant shall have access to the children for 2 weeks of every alternative school holiday at his place of abode and shall be entitled to have the children with him in South Africa provided he caters for their travel expenses.
 - 3.2 the defendant shall have reasonable access to the children on notice whenever he visits Zimbabwe .
4. The defendant shall:
 - (i) Pay the children's school fees and levies directly to such schools as the parties may agree to further their children's education.
 - (ii) Purchase the children's school uniforms and all school essentials and incidentals.
 - (iii) Maintain the children on full medical aid cover.
 - (iv) Pay \$300.00 per month per child for the general needs of each minor child.
 - (v) Pay all outstanding arrear school fees and levies for the two minor children at the respective schools.
 - (vi) The maintenance order shall be effective until the two minor children complete their tertiary education or become self-sustaining whichever occurs first.
5. The plaintiff shall provide all the other general financial needs of the two minor children.
6. The plaintiff's claim for post-divorce spousal maintenance be and is hereby dismissed.
7. The parties are each to retain all household goods and effects and other property presently in their possession.
8. The defendant shall retain all the other immovable property currently registered in his name and he is declared the sole and exclusive owner of that property.

9. The plaintiff and children are to stay at the Avondale matrimonial home 41 Bridgeways Harare, till the youngest child turns 18 or becomes self-sustaining whichever occurs first.
10. Upon the youngest child turning 18 or becoming self-sustaining whichever occurs first, the Avondale home, namely number 41 Bridgeway Avondale Harare, shall be shared equally between the parties with the plaintiff being given the first option to buy out the defendant within 6 months of the evaluation of property.
11. The evaluation of the property shall be effected by an evaluator to be appointed by the Registrar of the High Court within a period of 14 days upon request by either of the parties.
 - (a) The evaluation costs shall be borne by both parties at in equal proportions.
12. In the event of the plaintiff failing to buy out the defendant within the prescribed time the defendant shall buy out the plaintiff within 6 month of the plaintiff's failure.
13. In the event that both parties fail to buy each other out the house shall be sold to the best advantage and proceeds therefore shared between the parties at the rate of 50% share each.
14. The defendant shall sign all documents to facilitate sale and transfer of the property within 14 days of the expiration of the buy out period.
 - 14 (a) In the event that the defendant fails to sign the documents to facilitate sale and transfer within 14 days of request, the Sheriff of the High Court is hereby directed and authorised to sign all documents to facilitate the sell and transfer of the property 41 Bridgeways Harare.
15. The defendant shall bear the costs of suit.

Munangati & Associates, plaintiff's legal practitioners
Atherstone & Cook, defendant's legal practitioners