MHANYIRAI SHERENI JONGWE
versus
MEMORY SHERENI (NEE MUTENHERWA)

HIGH COURT OF ZIMBABWE
MUCHAWA J
HARARE, 6, 7, 8 February & 12 May 2023

**Civil Trial – Divorce**

Mr *G Tapera*, for the plaintiff
Mr *S Kuchena*, for the defendant

**MUCHAWA J**: The plaintiff and the defendant are husband and wife who were married in terms of the then Marriage Act [*Chapter 5:11*] in 2006. Whereas the plaintiff said that this followed an unregistered customary law union entered in 2004, the defendant insisted that this was in 1999. Three children were born to this marriage namely Takudzwa L. Shereni (born 8 August 1999), Tinotenda Shereni (born 22 December 2004) and Tawananyasha B. Shereni (born 28 November 2012).

The plaintiff issued summons claiming that the marriage has irretrievably broken down to the extent that there is no reasonable prospect of the restoration of a normal marriage relationship between the parties. It is alleged that the plaintiff has lost love and affection for the defendant, and they have not been living as husband and wife and now have totally different interests. It is averred that the parties have agreed that they should divorce.

The plaintiff stated that it is in the best interests of the minor children that their custody be granted to the defendant with plaintiff being granted reasonable access. He offered to pay maintenance for the minor children in the sum of US$50 per month until the children become self-supporting or attain the age of majority, whichever is the latter. In the result, the plaintiff was praying for a decree of divorce, access to the minor children and payment of maintenance as proposed.

The defendant pleaded that in her opinion the marriage had not irretrievably broken down, but she would not contest the divorce if the plaintiff insisted. On maintenance, she further claimed that the plaintiff should also pay school fees and buy school uniforms for the minor children and that he keeps them on his funeral policy cover.

In her counterclaim, the defendant averred that the parties had acquired both movable and immovable properties through their joint efforts which she proposed be shared as follows:
**Plaintiff**:- Phillips TV, 4-piece maroon sofas, imperial upright fridge, Kwese decoder.
**Defendant**:- Samsung TV, Canon printer, 4-piece black sofas, Capri deep freezer, kitchen unit, queen size bed, stove, open view decoder.

She also claimed that there was a Honda CRV vehicle which should be sold, and the proceeds shared equally. In addition, the defendant alleged that there were two immovable properties bought during the subsistence of the marriage being a stand in Chopera Village, Besa, Seke Rural and Stand 3633 Manyame Park, Chitungwiza. She prayed that the plaintiff be awarded the stand in Seke rural whilst she be awarded the Manyame Park property.

In his plea to the counterclaim, the plaintiff denied that the defendant had made any contributions to the purchase of the motor vehicle and the two immovable properties. He claimed he had purchased all three properties on his own. He further averred that the motor vehicle had been legally donated to the Shereni MJ Family Trust which was duly formed and registered with the Registrar of Deeds together with the immovable properties. The trust was alleged to have been formed for the benefit of the children. He consented to the proposed sharing of the movable properties.

The plaintiff's pre-trial conference minute set out the issues for determination by the trial court as follows:

1. Whether or not the immovable property Stand Number 3633 Manyame Park Chitungwiza should form part of the distribution list of property.
2. Whether or not the defendant is entitled to any share with regards to the stand in Chopera Village, Besa, Seke Rural.
3. Whether or not the parties should contribute equally towards the welfare of the minors.

On her part, the defendant set out the issues for determination as follows:

1. Whether or not the two immovable properties should form part of the matrimonial property.
2. Whether or not the properties should be shared equally between the parties.

3. The amount of maintenance that the plaintiff should contribute towards the upkeep of the two minors.
4. Whether or not the Honda CRV should be sold, and proceeds shared equally between the parties.

The joint pre-trial conference minute shows that the parties agreed that the marriage had irretrievably broken down. They also adopted the defendant's proposal for the distribution of the movable property except for the motor vehicle. The question of custody had never been contested. On the maintenance of the two minor children, Tinotenda Shereni (born on 22 December 2004) and Tawananyasha B. Shereni (born on 28 November 2012), it was agreed that the plaintiff would contribute half of the minor children's school fees and pay monthly maintenance of US$25 per month per child payable at the interbank auction market rate applicable on the day of payment. The plaintiff would also buy the minor children's school uniforms. The defendant would cater for the other half of the school fees and contribute towards the children's medical aid and cater for their daily needs.

What was referred to trial are these issues:

1. Whether or not the defendant is entitled to 50% share in the immovable property known as stand number 3633 situated in the township of St Mary's in the District of Goromonzi. (Hereinafter referred to as the Manyame Park property).
2. Whether or not the defendant is entitled to any share in the immovable property situate in Ziko Township, Seke Area. (Hereinafter referred to as the Seke Rural property).
3. Whether or not the vehicle Honda CRV Registration Number ADA 3607 was sold during the subsistence of the marriage, if not, is the defendant entitled to 50% share?

**The Plaintiff's Case**

The plaintiff gave evidence and stated that he contracted a civil marriage with the defendant in 2006 after entering an unregistered customary law union in 2004. He however said that he has been married to her for 17 years thus discarding the customary law union years. He claimed to have bought the Manyame Park property in 2001 before his marriage to the defendant. He said he embarked on saving for this purchase as far back as 1994. A receipt on p 42 of the record was pointed to as proof that the purchase occurred in 2001. The plaintiff allegedly started constructing in 2002 using the proceeds from the sale of a property he had bought in Lalapanzi in 1996. There were however no documents to prove the existence of such property nor its alleged disposal.

The defendant was said to have come onto the scene in 2004 when the construction of the Manyame Park house was allegedly at window level, and he had purchased everything for construction including the roofing material. This meant that she had not contributed anything to the acquisition of the stand and construction of the house and the plaintiff vehemently denied that the defendant had applied for any loans to aid in the purchase and construction of the house.

The agreement of sale between the plaintiff and the Chitungwiza Municipality was produced as exhibit 2 and it appears on pp 45 to 51 of record reflecting only the plaintiff's names as purchaser.

On the Seke Rural property, the plaintiff alleged that he purchased the property in 2017 during the subsistence of his marriage to the defendant but used only his own funds in both purchasing and construction. He said that the defendant's only contribution was indirect.

The plaintiff's estimated value of the Manyame Park property is between US$23 000 and US$24 000 whilst that of the Seke rural property is US$8 000.

The plaintiff averred that he bought the motor vehicle in 2013 but in 2021 they had a challenge of failing to meet the children's school fees as Takudzwa was in Bindura University requiring fees in the amount of over $32 900 whilst Tinotenda who was in boarding school required $39 400 and Tawananyasha needed $6 000. He claims that following a discussion with the defendant, they agreed to dispose of the motor vehicle to raise school fees. The documents on pp 53 and 54 of record (Exhibits 3 and 4) were referred to in support of this. On p 53 is an affidavit sworn to by the plaintiff in which he states that he has sold the motor vehicle to Abigail Marengu of Number 66 Gandinga Road, Zengeza 2 Chitungwiza on 20 January 2021. On p 54 is an alleged application for change of ownership dated 5 February 2021.

Commenting on the plaintiff's claim that she be awarded the Manyame Park house whilst he gets the Seke Rural property, the plaintiff said that this would be unfair as the Manyame Park property is the only urban property of the parties and if that happens, he will not have any capacity to get another property in the urban area. He stuck to offering the defendant only 12% of the Manyame Park property on the pretext that he had single-handedly acquired and developed it and the offered percentage represents the defendant's indirect contributions.

As the plaintiff said that he got the Seke Rural property after his marriage to the defendant, he said he was prepared to offer her between 40-50%.

Under cross examination, the plaintiff conceded that both parties are teachers who started off teaching in rural areas and using school accommodation. He agreed that they were earning the same salaries. He claimed to have applied for a loan to pay the children's school fees but professed ignorance on whether the defendant applied for any loans. He said that they had assigned each other roles in the running of their home. The defendant's role was said to have been the purchase of groceries and food whilst the plaintiff paid school fees and attended to building.

According to the plaintiff, he never taught at the same school with the defendant prior to 2004. He denied that he paid lobola for the defendant in 1999 even though their first child was born in 1999. He stated that the two of them had been mischievous resulting in the birth of the child, but they did not get married then. In fact, the plaintiff said that when he was informed of the pregnancy, he broke off the relationship with the defendant as he was denying responsibility even though he knew that he was responsible. From then till the child was about three years old, the plaintiff said that there was no communication between them till the defendant visited him with the child at Maramba school where he was teaching in 2003. The plaintiff averred that he then professed that he was now mature and ready to settle down with the defendant and then asked her to marry him. He then went to pay lobola in 2004. When quizzed under cross examination, the plaintiff conceded that they had broken up in 1999 when he impregnated her and reconciled in 2003. When it was put to the plaintiff that they were already staying together in 2001 and would rent property in Chitungwiza during holidays, he denied that.

The plaintiff said they met on a bus in 1997 and started a relationship. They would meet up at agreed places thereafter. He had been a temporary teacher from 1991 to 1994 then went for teacher training and started teaching as a qualified teacher in January 1998.

Upon being quizzed as to why the summons in this matter were silent on issues of property sharing, the plaintiff said that he had personally bought the properties and he thought it was not necessary to include these especially the Manyame Park property.

The plaintiff agreed that he had started to let out the Manyame Park property from 2019 and he would collect the rentals and put them to his own use. He explained that he was using the rentals to pay school fees for the children. He accepted that this house in Manyame Park is fully built up and is tiled, gated, has a ceiling and everything is there. The plaintiff was questioned on a protection order of the Chitungwiza Magistrates Court under case number PR 12/22 which bars the plaintiff from preventing the defendant from entering the Manyame Park

home. He said he was aware of an order which directed him to give the defendant access to the Manyame Park home which order he said he had adhered to as the defendant and the three children are in occupation of one room at the house whilst the rest are occupied by tenants allegedly to raise fees for the children. It was however alleged by defence counsel that the plaintiff has been enjoying the fruits of the Manyame Park house alone.

A sticky point raised in cross examination was why the plaintiff in applying for the house from Chitungwiza Municipality in 2001, included the defendant in the form and listed her as his wife for the residential stand. He agreed he had included her as his wife, but she was in fact only a girlfriend and he had done so on the advice of some municipal officials so that the process could be faster.

The plaintiff also denied that the two of them had approached a Mr Chingoka to get assistance to get the stand. He said he had approached him alone as he was a friend of a friend of his.

It was put to the plaintiff that the two of them could not raise the $53 000 which was needed for purchase of the Manyame Park property and the defendant, upon agreement borrowed the money from Mr and Mrs Chirova who were also teachers at the same school, and she repaid same on her own. On the contrary, the plaintiff said that he raised the money on his own and put it in his Beverley bank account and transferred it to Chitungwiza Municipality. He could not remember the first builder they contracted to build the Manyame Park house whom the defendant put as Mr Chibanda from Mutoko. He denied this as well as the defendant's averment that she catered for the builders and was there when they put in the foundation. The plaintiff's testimony was that the defendant had only seen this property in 2004 after the payment of lobola and by then, the house was at window level. Her contributions were said to have been only cooking and washing his clothes, therefore indirect to the acquisition of the Manyame Park property. The contracted builders are said to have included their food charges in their price and so the defendant was said not to have cooked for any builders.

The Seke Rural property was said to have been acquired in 2017 at the price of US$1 500 from Brighton Makonyonga. He said that he solely funded this, and the defendant's role was to advise him of the availability of the property for sale. They are said to have gone together on the date of the purchase and he was fulfilling his assigned role of paying fees and building whilst she did the grocery and food purchasing. The agreement of sale was alleged to have been between Brighton Makonyonga and the plaintiff only. Reliance was placed on an

acknowledgement of receipt by Brighton Makonyonga which is on page 52 of record as proof that the agreement was between the two of them only. His children were said to have been at less pricey schools hence his ability to save this amount.

On the motor vehicle, the plaintiff persisted with his position that he was the one who bought the vehicle in 2013 and they both had agreed to dispose of it in 2021 to pay the children's fees. He was quizzed as to how the payment of fees had become a joint responsibility and he said that at some point they had agreed to help each other out on fees payment as his salary had become inadequate to cover this. He said that the vehicle was in the custody of the new owner and denied that he had been using it lately nor that it was parked at his school. The plaintiff testified that the vehicle was sold for US$1 000 after having bought it for US$9 000 in 2013. The price was said to have been determined by the purchaser as it was an urgent sale. An application for notification of vehicle registration being change of ownership was tendered as exhibit 4 which allegedly proves that the motor vehicle was sold to one Marengu Abigail. It is dated 5 February 2021.

The plaintiff testified that the defendant was currently living in one room at the Manyame Park property with the three children following an application for a protection order after her eviction from the school property she had been staying in with the plaintiff. He stated that she had been evicted by the by the school authorities but as the headmaster he had put the school stamp on such letters of 20 December 2021 and 5 January 2022. He agreed to have then written a letter to the defendant on 6 January 2022 basically endorsing her eviction from the school. The plaintiff said that the children were however not evicted, and their rooms were still available for them at the school accommodation.

When the court questioned the plaintiff on the state of the two immovable properties, the plaintiff said that the Manyame Park property is six roomed and is on 162 square metres and is fully constructed. The Seke Rural Property was said to be on 625 square metres and there is a four roomed house which is roofed and plastered both inside and outside, but the floors are not yet completed.

On lobola payment, the plaintiff said that there was a document signed in 2004 between him, his father, and the go between on the one hand and the defendant's father on the other. He said that such document was not before the court as it was in his father's custody and his father is now late.

The plaintiff's sister, Tressy Vari gave evidence in support of his case. She stated that the plaintiff customarily married the defendant in February 2004 and disputed that this

happened in 1999. She claimed that in 2004 their delegation comprised of her father, the plaintiff, Kennedy Shereni who is another brother and herself. She said they went to the defendant's home and were allocated a go between, one Murwira whose further particulars she could not remember. She denied that when they went in 2004 it was a follow up visit after the 1999 initial lobola payment. She denied that they paid for outstanding cattle and clothes for parents. She said they went with money for lobola and groceries. When it was put to her that the plaintiff said that he paid damages in 2004, she said she had not mentioned this as it was not asked. She then said that they had first paid damages.

She disputed that the defendant was there in 2001 when the Manyame Park property was purchased. Under cross examination, it was put to her that she is the one who had fetched the offer letter from Chitungwiza Municipality and had taken it to Chikuwa School where both parties were then resident. She disputed this. She claimed to have known in 1999 that her brother had impregnated a girl but said she was only introduced to the defendant in 2004. Tressy Vari denied ever visiting the plaintiff and defendant at Maramba School which address appears on the first child's birth certificate.

Based on the above evidence, the plaintiff is praying for an order that he be awarded 88% share of the value of the Manyame Park property, and 60-50% share of the value of the Seke Rural property. He insists that the motor vehicle was sold during the subsistence of the marriage with the consent of the defendant and says there is nothing to share, therefore.

**The Defendant's Case**

The first witness for the defendant was Dakarayi James Mutenherwa, her 90 her old father. His testimony was to the effect that the plaintiff is his son-in-law who came to marry his daughter in 1999 and that was the time they did the "kunongesa" part of the lobola ceremony. This he explained, started off with the defendant confirming that she knew the defendant and they could proceed with the ceremony. Thereafter she then picked a certain amount of money from that put in by the plaintiff's people as did her aunt. The plaintiff is said to have paid other things like "vhuramuromo, tswanyaruzhowa" and "makandinzwanani" and the main bride price which is "rutsambo/rugaba." This was said to have been recorded in his book whose extract was before the court. The plaintiff is alleged not to have paid some of the lobola charged on that first visit such as the 8 cattle which included "mombe yeumai" and "gono rababa." The plaintiff was alleged to have subsequently returned to pay some of the outstanding lobola, but the witness could not recall the dates. When he was told of the plaintiff's assertion that he went to pay lobola in 2004, the witness said that could have been the date he

went back to pay the outstanding lobola because he had gone back with clothes and items for the mother and father-in-law. He could not remember the exact amounts paid under each head but said these had been recorded in his book. When he refreshed his memory by perusing the book, he noted that the date of lobola payment was 25 August 2001 and spelt out the amounts charged under each head. He also noted that at the top of the page is the date 1999 and title Memory and Mhanyirai Shereni. The witness said that this is a book in which he recorded the lobola payments of all his daughters and said the plaintiff would be lying if he said that he never paid any lobola before 2004 and that he in fact married his daughter as a virgin in 1999.

In cross examination, counsel for the plaintiff sought to discredit the documentary record of the lobola payment by saying that it did not record the delegates and the witness explained that they did not record that, and it is not the practice to record delegates. When asked why his signature was missing, he stated that it was his book and for personal record and there was no need to sign. He said the go between was his best friend and that the plaintiff had cleared the lobola balance in 2004. He conceded that no items were written under the date 1999 and explained that that was because that is when they came to say they were in love. He then said lobola was only paid in 2001. When questioned about his daughter being a virgin in 1999 when lobola was paid yet the first child was born in August 1999, the witness said he did not understand.

The second witness for the defendant was one Webenlow Matsvange who testified that he is a builder and had been contracted by the plaintiff and defendant to build the Manyame Park house in 2007. The work he did was on the leaking roof, plastering, paving, scheming and the pre-cast wall based on a verbal agreement. He would be paid cash after every stage of the work done by either the plaintiff or the defendant. He was quizzed on the lack of documentary evidence, but he stuck to his evidence. He explained that he could not remember the amounts paid as it was during the bearer cheque period. Mr Matsvange said that it would be a lie if the plaintiff said he did not know him as he had even engaged him at the school he was teaching in Epworth after the work he had done on his house.

The third witness for the defendant was Mrs Maria Sibanda who testified that she is 57 years old and stays at 3632, St Marys, Manyame Park and that she started staying there in or about December 2000 to date. She said she knows both the plaintiff and defendant as neighbours and had first met them in 2001 when they got the adjacent stand, 3633, Manyame Park which is now separated by a pre-cast wall. They are said to have come and introduced themselves as husband and wife with a young child who was about 2 or 3 years old, when the

stand was still vacant. Furthermore, the witness said that she witnessed all the developments on the stand as the parties first built a 1-roomed cottage and would come during the holidays to attend to the building of the main house and during term time would leave a brother-in-law in occupation. She even testified that she had seen the defendant cooking and serving the builders.

The fourth witness for the defendant was another builder, Chancellor Kanosvora who testified that in 2015 the defendant was teaching his child when she learnt that he was a builder and invited him to her house in 2016 where he met the plaintiff. They contracted him to attend to the ceiling, painting, changing doors, and welding a fowl run. After completion of the work, he said he was paid in kind and in money as he was given household goods being a kitchen unit, wardrobe, and room divider. He said the payments were handed over by the defendant. He did not have documentary proof to show that he is builder. He said too that after this, the plaintiff had engaged him to do some work at St Marys Early Learning Centre in about 2021 to 2022.

The defendant gave evidence and testified that she is now 48 years old and is a primary school teacher and a vendor. She started working before her marriage in January 1998. She claimed to have first met the plaintiff in 1995 when they were both on home teaching at Murwira Primary School in Buhera. This is when they fell in love and the defendant's father was a teacher there too. She was at Seke Teachers College whilst he was at Mkoba Teachers College, and they would meet up in various rendezvous as there were no cell phones then. She further said that by 1996 they were acting like a married couple, engaging in sexual intercourse and she introduced plaintiff to her family in 1998 through her sisters Mabel Mazenge in Masvingo, Letwin Masocha in Mabelreign and Mercy Mutenherwa. She claimed to have been introduced to the plaintiff's sisters, Tressy Vari and Rufaro Mbawa around the same time. She claimed that they had unprotected sexual intercourse in or about November 1998 when they visited Rufaro Mbawa leading to her falling pregnant with their first child. She explained that she was initially deployed to Kenzamba Primary School in Chinhoyi, but the plaintiff pushed for her transfer to Bangare Primary School in UMP whilst he was at Maramba Primary School in UMP. She says that they then agreed that he would go and marry in 1999 but they would not announce the pregnancy to avoid embarrassment.

According to the defendant, the first lobola ceremony happened in February 1999. She detailed that they first went to his home in Bika area and took his father Jongwe Shereni who is now late. Plaintiff's mother Dzidzai Shereni had already been introduced to the defendant,

but it was her first time to meet the father. The three of them then proceeded to the defendant's home that evening as the defendant wanted things done fast but he was advised that lobola would be paid the next day. The go between was Obert Pasi Murwira and it was him, his wife, plaintiff and defendant and his father who then attended for the lobola payment. From the defendant's family were her brothers, her aunts, uncles, and sister Mabel. The plaintiff is said to have paid the lobola charged and what remained outstanding was payment of cattle and parents' clothes. The plaintiff is alleged to have asked the defendant to give him what she had picked so that he could finish "rutsambo." The plaintiff's father is said to have sung and danced in jubilation of what his son had done. The plaintiff is alleged to have said that he wanted his wife handed over in terms of the "kupereka" ceremony which then happened in April 1999. Thereafter in terms of the practice of "kusungira" when a woman gives birth to her first child, the plaintiff is said to have done so resulting in the defendant delivering her first child from her parents' home on 8 August 1999. The plaintiff's sisters, Tressy and Ruramai together with their mother Dzidzai and stepmother Agnes, are said to have gone to congratulate the defendant at her parents' home. Thereafter, she says she was taken to the plaintiff's home after about two months. She was on maternity leave and joined her husband at Maramba Primary school. She then transferred from Bangare Primary School to Mashambanhaka Primary School, and they were staying as husband and wife then. By end of 2000 she says that they both transferred to Chikowa Primary School.

In terms of earning capacity, the plaintiff said that they were earning the same salary as they were both primary school teachers and were doing things together. In explaining how they got the Manyame Park Stand, the defendant said that a neighbour of Tressy Vari was the daughter of Mr Chingoka, the then Mayor of Chitungwiza who assisted them in getting the stand. In 2001 Tressy Vari is said to have gone to Chikowa Primary School with the offer letter. They had been saving for the stand but had a shortfall and she approached Mrs Chirova, a fellow teacher to borrow some money on the pretext that they wanted to pay fees for the plaintiff's brother, fearing that if they disclosed that it was for a stand, they would not be given. This was per plaintiff's advice.

The defendant gave evidence that her husband would collect their savings money and keep it and she had no problems with that as she was so raised and would submit. It was the plaintiff who then took the amount of $ 53 000 requested and attended at Chitungwiza Municipality. He is said to have gone back with Tressy Vari and defendant remained behind because of transport money. Upon the plaintiff's return, she says she questioned why the

property had his name only and plaintiff said it did not matter as it was their joint property, and he would put their joint names in the title deeds. She said she did not contest this as the plaintiff was head of the household. The defendant says they went together to be shown the pegs for the property as it was a new and bushy location. She says she was shown the memorandum of agreement which listed her as the wife, and she settled for that. At that time, she said they both earned $15 000, and the plaintiff had even requested her payslip and ID card. Thereafter they started making developments starting with a cottage. She says that both would take out loans for the building project as their money was not enough. Tressy Vari was said to have been used as a witness to the applications.

Reliance was also placed on the evidence of the builders and the neighbour who testified to her participation in the building of the Manyame Park house which is now well developed. She said that in 2017 she got a loan to put in the ceiling and tiles. The value of the Manyame Park property was put at US$30 000. She pointed to the certificate of occupation as designating the property as a residential property and putting her as the wife with her name and date of birth as well as their first child who is also included by name and date of birth. The defendant believes that she contributed 50% directly to the building of the property as they were receiving the same salaries. The plaintiff became a headmaster in 2019 and persuaded the defendant that they move into the school accommodation offered to him. He subsequently put a tenant in the house contrary to their agreement not to do so. It was pointed out that as of today, the defendant is not enjoying the fruits of the Manyame Park property and it is the plaintiff who is exclusively collecting rentals. She believed that the plaintiff was using the money to develop the Seke Rural property which they had agreed would be their retirement home. When she requested 50% of the rentals, she says that became the cause of domestic violence and a case went before the Chitungwiza Magistrates Court. It was then that the plaintiff told the defendant that the house is not hers as her name does not appear in the relevant documents. She estimated the rentals fetched from a house such as this to be in the region of US$500 per month and the plaintiff has been collecting such rentals for 46 months. She denied the assertion that rooms in Manyame Park cost US$30 and not US$800 and said rentals depend on the state of the house and not necessarily its locality.

The defendant related how the plaintiff then caused an eviction letter from plaintiff's school accommodation to be authored against her after serving her with divorce summons. She said she had nowhere to go as the plaintiff's tenant was barring her from accessing the Manyame Park house. She only got the one room she is staying in after applying for a protection

order PR 12/22 at Chitungwiza Civil Court. The plaintiff is said to have appealed this decision at the High Court under CIV "A" 21/22, but his appeal was dismissed as in exhibit 6 and 7.

She points to indirect contributions in cooking for the builders and buying food and even crushing stones. As a result, the defendant claims that her contribution was 100%. She wants the whole of the Manyame house awarded to her as she says it represents the proceeds of her sweat, is her matrimonial home in which she gave birth to her two children, and they have been staying there. She said the school where she teaches is close to the house and that is where her last child learns in grade 5 now. She said she is currently staying with her three children in one room. The children are a boy of 23 years, a girl of 18 years and another boy of 10 years. This, she said was even though there were three vacant rooms when the court gave her a right to access the home and live there. Furthermore, the defendant said that for most of her married life she had not had a maid except when her children were very young as the applicant would say that he does not want his clothes washed by a maid nor his food prepared by a maid.

With that said, the defendant persisted with her claim for award of the Manyame Park property as her sole property and that the defendant be awarded the Seke Rural property as his sole property.

The state of the Seke Rural home was said not to be habitable as there is no water and electricity, and that the plaintiff had put another woman there.

Regarding the motor vehicle, the defendant said that she never agreed to have it sold and disputed that it was sold as she has always seen him drive it. In particular, she said that on 23 January 2023, she saw the plaintiff driving the vehicle at St Mary's Police Station in the company of his sister Tressy Vari when they were going to court for contempt of court proceedings. She tendered the photograph taken on that day as evidence. Investigating Officer Sergeant Shaba and Sergeant Ganda were said to have been in attendance too. Sergeant Ganda is said to have boarded that vehicle to go to court whilst defendant and Sergeant Shaba used public transport. The car was said to be always parked at the school where he is the headmaster. The defendant claimed to have contributed to the purchase of the motor vehicle as they paid cash in the amount of US$8 000 and the plaintiff then got a loan for US$1 000 to make up the US$9 000 asked for. At that point, the defendant says she then paid all the children's school fees and catered for food. Though the car was bought in 2013, the defendant put its current value at US$8 000 and said that the car was used in Harare only and is in good condition as the

plaintiff usually uses the school vehicle for most of his trips. She wants half the value of the car.

On the Seke Rural property, the plaintiff said that they were given the stand, by her sister's child and they gave him an appreciation of US$1 500 and wrote an agreement of sale which included both their names. The house was said not to be fully developed. There are no toilets, no electricity, and no schools nearby but the area is sought out for projects. She valued the property at US$15 000. She emphasized that she had seen the plaintiff in the company of a woman she has seen him around with at the Seke Rural property and tendered a picture. This is the woman the plaintiff is alleged to be living with now. In cross examination, the defendant was directed to the payment of $1 500 from the plaintiff's CBZ account to Brighton Makonyonga and she disputed that. The acknowledgement of receipt by Brighton Makonyonga was said to be more than meets the eye and that it does not show where the money came from. She referred to the agreement of sale on p 118 of record in which both their names appear as proof that they jointly purchased the property.

Under cross examination, the plaintiff's counsel questioned the relevance of the photographs tendered as not showing the date and place where the photos were taken and the presence of the plaintiff and his sister, Tressy.

It was the defendant's further evidence that she is currently earning RTGS $36 000 and none of her children are bringing in any income as they are all still in school. She said she is not likely to acquire any assets due to her age. She said she expects the 10-year-old child to be self sufficient at the age of 25. Their standard of living before the problems in the marriage, was average as she said they were using the full house as the plaintiff did not want any tenants and loved his family. They sent their children to boarding schools, and one is still there. In terms of indirect contributions, over and above what has already been set out, the defendant said that she has been striving to provide emotional support for the children especially after her eviction from the school. She pays school fees for the children, their online and extra lessons as well as buying clothes. From 2019, the defendant says that she has been responsible for the children's day to day needs as well as providing tuck for the child in boarding school and is the one who usually goes for the school visits. She pays US$22 for the university kid every 10 days for food and pays for airtime and data bundles for the two older children. She said that during the happy days, they were both responsible for payment of fees for the children and would take turns to pay.

An example was given of when the child in university wanted to collect his results and there were fees owed and the plaintiff refused to pay and said the defendant should pay. He is also alleged to have wanted to pull out the child in boarding school, and the defendant paid the fees to keep the child at the school. The defendant alleges that she is paying rates for the Manyame Park house because when she moved into the one room there were arrears and water had been cut off. She had to clear those for water to be reconnected.

In explaining the record of lobola payment, the defendant said that the plaintiff first went to pay lobola in February 1999 and promised to return in August 2001, but he failed and went back in or about September or October 2001 as per page 122 and 123 of record. On being questioned why the details of the payments appear under 25 August 2001, the defendant said that is how her father wrote it and he is now elderly and cannot remember what transpired then.

The plan approval fees were said to have been paid in December 2001 as appears on p 42 of the record. The defendant denied that this was solely the plaintiff's money and said they had pooled resources for this.

When asked about the change in her claim for the Manyame Park house from the 50% in the joint pre-trial conference minute and the 100% now claimed, the defendant pointed to her counterclaim in which she put in a claim for 100% and said she has been consistent.

**Analysis of Evidence**

The plaintiff was not a credible witness. Firstly, his declaration is totally silent about the properties in issue. He chose not to include them and if the defendant had not received proper advice, the divorce matter would have been finalised without their inclusion. His explanation that he did not include them as he bought them himself is incredible given that he was legally represented right from the beginning.

Secondly in his plea to the counterclaim he said these were his properties as he bought them before the marriage which happened in 2006 as evident from the marriage certificate on record. The Manyame Park house was said to have been acquired in 2001 before the 2006 marriage. The motor vehicle was said to have been legally donated to the Shereni MJ Family Trust which was duly formed and registered with the Registrar of Deeds as were the Manyame Park house and the Seke Rural property. The deed of trust and deed of donation were not produced for the court. Because the plaintiff was making up his case as he was going along, contrary to his assertion that the motor vehicle had been donated to The Shereni MJ Family Trust on 25 June 2021, he then produces a change of ownership of the vehicle on p 54 which is incomplete. It does not show the names of the current owner, date of Zimbabwean

registration and date of expiry of insurance, among other things. It is therefore not of any probative value. Interestingly such change of ownership allegedly happened on 5 February 2021 yet in the plea of 25 June 2021, he does not say the motor vehicle is no longer available for distribution as it was sold. He is clearly spinning his story as he goes along. To buttress my findings, I rely on the case of *City of Harare* v *Everisto Mungate* SC 86/22 in which the following findings were made:

> "In *Keavney* & *Anor* v *Msabaeka Bus Services* (Private) Limited 1996 (1) ZLR 605 (S) at 608B-C the following point was made:
>
> 'A pleader cannot be allowed to direct the attention of the other party to one issue, and then at the trial attempt to canvass another", as MILNE J (as he then was) put it in *Kali* v *Incorporated General Insurance* Ltd 1976 (2) SA 179 (D) at 182 A.
>
> The purpose of pleadings is to define the issues, and to enable the other party to know what case he has to meet" (per MULLINS J in *Niewoudt* v *Joubert* 1988 (3) SA 844 (C). See also *DD Transport (Pvt) Ltd* v *Abbot* 1988 (2) ZLR 92 (S) at 101F-G.'"

> Further down on the same page at D-E the following findings were made:
>
> "The failure, in this case, to plead the real defence, suggests one or other of three possible explanations:
>
> 1. Sheer idleness and incompetence on the part of the pleader.
> 2. A deliberate and unconscionable attempt to avoid attracting an onus or "burden of adducing evidence".
> 3. That the defence was an afterthought on the part of the defendant."

Another inconsistency arises from the plaintiff's assertion that they sold the motor vehicle in 2021 to raise school fees for the children yet at the same time he says that he was letting out the Manyame Park house from 2019 to pay the children's school fees. The amounts he stated can very easily be covered by the rentals allegedly collected.

In this case, the plaintiff appears to have deliberately and unconscionably attempted to avoid attracting the burden of adducing evidence. Unfortunately for him, his attempt has been unsuccessful. Alternatively, the story about the vehicle having been sold was an afterthought, possibly after failing to produce the deed of trust and the deed of donation.

The biggest hurdle for the plaintiff was his evidence that he impregnated the plaintiff and denied responsibility and broke off with her in 1999 because they had been mischievous, and the child was essentially a mistake. He said he then broke off the relationship and there

was no communication till the defendant visited him with the child in 2003. This is in stark contrast to the Chitungwiza Municipality Certificate of Occupation which lists the defendant as a wife and the child Takudzwa as a son and their years of birth respectively as 1974 and 1999. The application to Acquire or Lease Municipality Land on pp 115 to 117 of record, shows that the plaintiff put in both their salaries and indicated that both their salaries were $15 000 (his and his spouse's). He lists the defendant's particulars as those of his wife complete with date of birth and those of the child Takudzwa. His explanation that she was his girlfriend, and he did this on the advice of municipal officers is unbelievable as he said in his own evidence that they had broken off the relationship in 1999 and only reconciled in 2003.

It is interesting that the plaintiff did not include the document he alleges was signed by him, his father, defendant's father and brother and the go between, for the alleged lobola payment of 2004, on the pretext that such document was in his father's custody, and he is now late. The two affidavits by his brother Kennedy Shereni and sister Tressy Vari on pp 71 and 72 of record, say that he is the one who had custody of such document and not their father. This appears to be a calculated move on plaintiff's part to avoid the onus of proof.

The defendant's testimony that they were already customarily married in 1999 and that they presented themselves as such was buoyed up by their neighbour, Mrs Maria Sibanda who gave evidence well and was unshaken in cross examination. Though the defendant's father had also confirmed that version, he seems to have been confused in cross examination. This is a 90-year-old man being asked to recall and comment on what happened some 24 years ago. It is understandable that he mixed up the details. There is even an affidavit from the go-between on p 124 of record which confirms the defendant's version. His record of the lobola payment on pp 121 to 122 of record is not necessarily written in a clear way to make this court conclude that the initial date of payment of lobola was 1999 or 2001. Both dates appear on that record. It is the date of 2004 which does not appear. The application forms for the Manyame Park stand resolve this issue and show that by 2001 when the purchase occurred, the parties had already entered an unregistered customary law union.

Another interesting fact is that the plaintiff chose to give scanty information about how the relationship evolved and how he ended up marrying the defendant in 2004 as alleged. The defendant gave a blow-by-blow account of their relationship, customary marriage and what happened thereafter. The defendant was not cross examined on this. Both the plaintiff and his sister gave bare denials of having gone to marry in 1999. Though Tressy Vari was said to have been introduced to the defendant in 1998, gone to congratulate the defendant at her home when

she delivered the first child and delivered the offer letter, there was no cross examination of the defendant on those facts.

The defendant gave her evidence well and was unshaken. I accept her version of the events and believe that the plaintiff did all he could do to keep the motor vehicle and immovable properties from the defendant's reach. This included non-disclosure, making up the evidence as he went and getting his dear sister to support his lies. He even went as low as saying his first child was an unfortunate mistake whose responsibility he denied. He even chose to ignore the years of the customary law union even from the 2004 he claimed was the date of lobola payment. This seems to have been in a bid to get the Manyame Park house as his by making up a case that it was bought before the marriage and he met all the expenses before the defendant arrived on the scene, including buying of all building materials. It appears he was ill advised on the law.

The builders who gave evidence supported the version that the defendant gave. Their evidence shows that the plaintiff and the defendant were developing their house jointly.

Mrs Maria Sibanda showed that the house was built from 2001 in the presence of the defendant.

There is an affidavit on p 118 of record attested to by Brighton Makonyonga in which he confirms that he has sold a piece of land to both plaintiff and defendant. That is the Seke Rural property, and it is dated 24 July 2017. They therefore jointly bought this property.

My factual conclusions are that the plaintiff and the defendant got customarily married in 1999 and were so married when the payment for Manyame Park stand was made on 12 June 2001 even though the property was only registered in the plaintiff's name. I conclude too that the parties contributed equally in terms of finances to the running of their household, however such responsibilities were apportioned, because they were both teachers earning the same salaries. The Seke Rural property was also bought by the parties, jointly during the subsistence of their marriage.

I also conclude that the motor vehicle is available for distribution. It was never sold. The plaintiff made a bad move of trying to pull wool over the court's eyes and forgot what his pleadings had said about the motor vehicle. He was not astute to closely look at the dates. The pictures provided by the defendant, on their own, would not have assisted to show that the motor vehicle was still in the plaintiff's possession as they do not show that he was in the car, that it was at St Marys' Police Station and the date thereof. The defendant need not have worried herself as the plaintiff undid his own pleaded case.

Though it is not my place to apportion fault, I need to point out that the plaintiff conducted himself in a despicable manner, in evicting the defendant from the school accommodation they had been living in with their three children and at the same time barring her from accessing and living in the Manyame Park house. She only accessed the house following a court application and still only got a room to share with two adult and one minor child. At the same time, the plaintiff has been collecting rentals from the tenants at the house but not ensuring that rates and water are paid for. This shows a high level of irresponsibility and selfishness. The children, who were used to living in spacious accommodation, have had their lives turned upside down, unnecessarily so. The divorce proceedings could still have continued with parties conducting themselves civilly and protecting their children, as much as possible, from any adverse effects.

**The Law**

The position of the law is aptly captured in *Kwedza* v *Kwedza* HH 34/2012:

"The division of assets consequent to a divorce is governed by s 7 of the Matrimonial Causes Act, [*Chapter 5*:*13*] herein after referred to as the Act. Section 7(1)(a) of the Act states that:

'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 or distribution of the assets of the spouses, including an order that any asset be transferred from one spouse to the other;

Subsection (4) of s 7 then enjoins the appropriate court to consider all the circumstances of the case in the exercise of its discretion in this regard by stating that:-

'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 is 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 by each spouse to the family, including contributions made by looking after the house 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 the children in the position they would have been in a normal marriage relationship continued between the spouses.'"

As aptly noted by MALABA JA in *Gonye* v *Gonye* 2009 (1) ZLR 232 at p 236H to 237B:

> "It is important to note that a court has an extremely wide discretion to exercise regarding the granting of an order for the division, apportionment or distribution of the assets of the spouses in divorce proceedings. Section 7(1) of the Act provides that the court may make an order with regard to the division, apportionment or distribution of 'assets of the spouses' including an order that any asset be transferred from one spouse to the other.' The rights claimed by the spouses under s 7(1) of the Act are dependent upon the exercise by the court of broad discretion…
> The terms used are the 'assets of the spouses' and not matrimonial property. It is important to bear in mind the concept used, because the adoption of the concept 'matrimonial property' often leads to the erroneous view that assets acquired by one spouse before marriage or when the parties are separated should be excluded from the division, apportionment, or distribution exercise. The concept 'assets of the spouses' is clearly intended to have assets owned by the spouses individually (his or hers) or jointly (theirs) at the time of the dissolution of the marriage by the court considered when an order is made with regards to the division, apportionment or distribution of such assets.
>
> The wide discretion must of course be exercised judicially taking into account the circumstances of each case. The object of the exercise must be to place the spouses in the position they would have been in had a normal marriage relationship continued between them.
> In an effort to achieve this object court has demanded of spouses to be candid with court in respect of their assets individually and jointly."

*In casu*, the plaintiff, though legally represented, seems to be labouring under the belief that if he succeeds in showing that the property is owned by him individually, then it will be out of reach of the defendant. He must stand guided by the case of *Gonye* v *Gonye (supra)*. The properties which fall to be distributed are the Manyame Park house, the Seke Rural property, and the motor vehicle.

On the income earning capacity of the parties, it is noteworthy that the parties are both qualified teachers, who for the most part, were earning the same salary. The plaintiff was promoted to headmaster in 2019 and now earns relatively more than the defendant. His position also comes with certain benefits such as free housing and a school motor vehicle. This evidence was not controverted. For a season in the marriage the plaintiff focused on his self-development as he studied for a degree and channelled some of his income towards fees. This paid off and he was promoted to headmaster.

On the other hand, the defendant has no other accommodation available to her which has the amenities of water and electricity, and which is conveniently situated close to her place of work and the last child's school. She does not have a car to facilitate her movement to and from work if she were to find alternative accommodation elsewhere. This is why she went through the trouble of applying for a protection order to access the Manyame Park property

and is squashed in one room with three children, a 23-year-old boy, an 18-year-old girl and a 10-year-old boy.

Though the first child is now a major, he has not yet become self-supporting, and the defendant is shouldering most of his expenses as shown in the evidence. She also caters for the children's day to day needs which obviously go beyond the meagre amount of US$25 offered for each of the two minor children per month. She pays for the water and electricity bills, the children' extra lessons, online lessons, and communication costs.

Regarding the standard of life of the parties, the parties' evidence shows that they had built a comfortable six roomed urban house. The defendant testified that the plaintiff did not want them to have any tenants, so they had adequate space for their family. The children were sent to boarding schools and the oldest is in university. Theirs was a decent lifestyle which was sadly turned upside down when the plaintiff evicted the defendant from the school accommodation knowing very well that he had put a tenant in the house.

On the issue of direct contributions, I already stated that the parties were both teachers and earned the same salary as reflected on the application lodged with the Chitungwiza Municipality. They took turns to get loans and may have apportioned responsibilities regarding the application of their finances to the household needs. That does not take away from the fact that they equally contributed the same amount of money towards everything they did as a family.

The defendant gave uncontroverted evidence on her indirect contributions. Over and above contributing directly and equally with the plaintiff, she cooked, cleaned, nursed the children as she did not have a maid most of her marriage. She was also wife, mother, domestic worker, and housekeeper. This was because the plaintiff did not want a maid to cook for him or wash for him. In *Usayi* v *Usayi* SC 11/03 the court opined on the valuation of indirect contributions as follows:

> "How can one quantify in monetary terms the contribution of a wife and mother who for 39 years faithfully performed her duties as wife, mother, counsellor, domestic worker, house keeper, day and night nurse for her husband and children? How can one place a monetary value on the love, thoughtfulness and attention to detail that she puts into all the routine and sometimes boring duties attendant on keeping a household running smoothly and a husband and children happy? How can one measure in monetary terms the creation of a home and therein an atmosphere from which both husband and children can function to the best of their ability?"

The defendant precisely did all the above listed even though she was a teacher too. In the *Usayi* (*supra)* case the Supreme Court upheld an award of 50% of the value of the house in

issue to a woman who had only indirectly contributed to the purchase of same. *In casu*, the defendant contributed both directly and indirectly. The plaintiff is even prepared to offer 12% of the Manyame Park house to the defendant for what he calls indirect contributions and 40 - 50% of the Seke Rural property. It is fitting that the defendant be awarded 15% more of the Manyame Park house just for her indirect contributions. This falls close to what the plaintiff was prepared to offer just for indirect contributions.

The parties have been married for a total of 24 years if the customary law union years are considered, from 1999. This is a long time to be married and to invest in, both directly and indirectly. It would be a travesty of justice if the court was to allow the plaintiff to get away with essentially making the defendant walk away with almost empty hands.

It has been observed in *Shenje* v *Shenje* 2001 (1) ZLR 160 (H) that there is need to place the needs of the parties at the centre and not their respective contributions.

> "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 the more important, and more usual, circumstances are listed in the subsection. The list is not complete. It is not possible to give a complete list of all the possible relevant factors. The decision as to a property division order is an exercise of judicial discretion, based on all 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 disadvantage, to the extent they are not inevitable, of becoming divorced."

In the exercise of my wide judicial discretion and with a view to achieve, as far as is reasonable and practical, having regard to the conduct of the parties, what is just to place the parties and children in the position they would have been in had a normal marriage relationship continued between the spouses, I consider the following factors as pertinent:

The first is the need to ensure that the defendant and the children have decent and secure accommodation at the standard they were used to. Plaintiff already has that benefit from his employment contract.

The second are the constitutional provisions. Section 26 of our Constitution of Zimbabwe[1] deals with marriage. Therein, it espouses the principle of "equality of rights and obligations of spouses during marriage and at its dissolution". Section 56 also lays down equality and non-discrimination as fundamental rights. Discrimination is prohibited on grounds such as custom, culture, sex and gender among others. Per TSANGA J in *Mhangami* v *Mhangami* HH 523/21.

[11] Amendment (No 20) Act 2013

I also need to have regard to the future financial obligations of the parties and the needs of the children. I will consider that for a good three years, the plaintiff has been exclusively enjoying the fruits of the Manyame Park house and that though he said it was to pay the children's school fees, he did not necessarily meet all such needs. The plaintiff has therefore largely recouped the 50% which fell due to him at the exclusion of the defendant. In this regard, a further 20% should be awarded to the defendant.

His care and love for his children seems to have evaporated at the onset of the problems between him and his wife. The children have been used to settle scores as pawns in a contest between the parents. That is unacceptable.

**Costs**

The defendant prayed for costs at an attorney-client scale on the grounds that the plaintiff who has been legally represented throughout this matter has not been genuine and has been unreasonable. He is said to have only accepted that the two immovable properties are assets of the spouses at trial and conceded then that the court can distribute them. It was pointed out that in his declaration, he had not even disclosed the existence of such properties leading the defendant to file a counterclaim. Despite such counterclaim, the plaintiff is alleged to have persisted with the position that the same were not available for distribution. This stance is said to have unnecessarily prolonged the suit, yet the matter could very well have been settled by consent of the parties.

The learned authors *Herbstein and Van Winsen* in The Civil Practice of the High Court and the Supreme Court of Appeal of South Africa, 5 ed : Vol 2 p 954, stated the following:

> "The award of costs in a matter is wholly within the discretion of the Court, but this is a judicial discretion and must be exercised on grounds upon which a reasonable person could have come to the conclusion arrived at. The law contemplated that he should take into consideration the circumstances of each case, carefully weighing the various issued in the case, the conduct of the parties and any other circumstances which may have a bearing upon the question of costs and then make such order as to costs as would be fair and just between the parties..."

Costs on a higher scale should be awarded only in exceptional circumstances. In *Chioza* v *Sawyer* 1997 (2) ZLR 178 (SC), it was held that dishonesty in litigation is certainly a ground for an order of costs on a higher scale. In *Davidson* v *Standard Finance Ltd* 1985 (1) ZLR 173 (HC) it was held that where a party's conduct is mischievous and objectionable and the cause of all the costs, then costs on a higher scale may be awarded. In *Mudzimu* v *Municipality of Chinhoyi & Anor* 1986 (1) ZLR 12 (HC), costs on a higher scale were awarded where the

respondent's behaviour was found to have been objectionable and unreasonable resulting in the applicant being put to considerable inconvenience and additional expense.

*In casu,* I have already shown the plaintiff's dishonesty in litigation relating to the motor vehicle and the date of the customary law union, facts evident from the evidence. The dishonesty was meant to get the plaintiff to exclude the motor vehicle and immovable properties from the defendant's reach. Had he been honest the matter could very well have been settled through the unopposed roll as all other ancillary issues had been resolved. He should have been upfront and included the immovable properties and motor vehicle in his declaration. His conduct was mischievous, unreasonable, and objectionable. There is no reason why the defendant should be put out of pocket in respect to this matter. It is my finding that costs on a higher scale are merited.

**I accordingly order as follows**:

1. A decree of divorce be and is hereby granted.
2. The defendant is awarded custody of the minor children Tinotenda Shereni (born on 22 December 2004) and Tawananyasha B. Shereni (born on 28 November 2012) with the plaintiff exercising reasonable access every two weeks of the school holidays.
3. The plaintiff is ordered to pay maintenance for the two minor children Tinotenda Shereni (born on 22 December 2004) and Tawananyasha B. Shereni (born on 28 November 2012), as follows:
    3.1 The plaintiff is ordered to contribute half of the minor children's school fees until completion of their first degrees; whilst the defendant would cater for the other half of the school fees.
    3.2 The plaintiff is ordered to pay monthly maintenance of US$25 per month per child payable at the interbank rate applicable on the day of payment until the children attain the age of 18 or become self-supporting, whichever occurs first.
    3.3 The plaintiff is ordered to buy the minor children's school uniforms.
    3.4 The plaintiff is ordered to cater for the minor children's medical aid with the defendant also contributing.
    3.5 The defendant will cater for the children's daily needs.
4. The movable properties of the parties are distributed as follows:

4.1 To the plaintiff: - Phillips TV, 4-piece maroon sofas, Imperial upright fridge, Kwese decoder.

4.2 To the defendant: - Samsung TV, Canon printer, 4-piece black sofas, Capri deep freezer, kitchen unit, queen size bed, stove, Open View decoder.

5. The immovable property known as Stand Number 3633 situated in the township of St Mary's in the District of Goromonzi is distributed as follows:

5.1 The plaintiff be and is hereby granted a 15 percent share in the immovable property known as Stand Number 3633 situated in the township of St Mary's in the District of Goromonzi.

5.2 The defendant is awarded 85 percent share in the said immovable property.

5.2.1 The defendant and the children are granted the right to use the immovable property exclusively with the defendant exercising total control over such immovable property to the exclusion of the plaintiff.

5.3 The immovable property shall be valued by an independent Valuator appointed by the Registrar of the High Court from the list of Valuators within 30 days of this order.

5.4 The parties shall meet the cost of valuation proportionately.

5.5 The defendant is hereby granted the option to buy out the plaintiff's share in the immovable property within three months from the date of receipt of the valuation report.

5.6 If the defendant manages to buy out the plaintiff, the plaintiff shall attend to signing all relevant documents for transfer of the property into defendant's names within ten days of the sale, failing which the Sheriff of the High Court or his deputy, will be authorized to sign all such relevant documents.

5.7 In the event the defendant fails to buy out the plaintiff within three months or such longer time as the parties may agree to in writing, and the plaintiff is the one who wants to exercise the option to buy out the defendant, such option shall only be exercisable at the point when the minor child, Tawananyasha B. Shereni (born on 28 November 2012), reaches the age of 18.

5.8 If neither party can buy out the other when Tawananyasha B. Shereni, born on 28 November 2012 reaches the age of 18, the property shall be sold to best advantage by an Estate Agent mutually agreed to by the parties and if they fail to agree, by one appointed by the Registrar of the High Court.

5.9 The net proceeds, after deducting the Estate Agents fees and other attendant costs, shall be shared in the 15-85 ratio set out above.

6. The Seke Rural property in Chopera Village, Besa shall be valued by an independent Valuator appointed by the Registrar of the High Court from the list of Valuators within 30 days of this order.

6.1 The parties shall meet the cost of valuation proportionately.

6.2 The Seke Rural property is to be sold and the net proceeds shared at the ratio of 50-50.

7. The motor vehicle, a Honda CRV registration No. ADA 3607 is to be sold and the proceeds are to be shared at the ratio of 50-50.

7.1 The parties are to agree on a value for the motor vehicle prior to the sale failing which it will be valued by professional valuers appointed by the Registrar of the High Court within 30 days of this order.

7.2 In the event that the plaintiff fails to avail the motor vehicle for evaluation, it shall be presumed that the value of the motor vehicle is US$ 5 000.00 and each party will be entitled to US$2 500.00 which amount can be set off against amounts due to either party.

8. The Plaintiff to pay costs on an attorney-client scale.

*Tapera Muzana & Partners*, plaintiff's legal practitioners
*LT Muringani Law Practice*, defendant's legal practitioners