

**NTOMBENHLE MOYO**

**Versus**

**MAXWELL MOYO**

IN THE HIGH COURT OF ZIMBABWE  
NDOU J  
BULAWAYO 22 & 25 OCTOBER 2012

*Mrs H. Moyo* for the applicant  
*Mrs N. Tachiona* for the respondent

Judgment

**NDOU J:** The applicant seeks a provisional order in the following terms:

“Terms of the final order sought

That you show cause to this honourable court why a final order should not be made against you in the following terms:

1. The provisional order granted by this honourable court against respondent be and is hereby confirmed.
2. Applicant be and is hereby granted the right to undisputed occupation and control of the parties matrimonial home at 519 Scone Drive, Killarney, Bulawayo pending a hearing in the principal divorce action.
3. Respondent be and is hereby prohibited from harassing applicant and making contact with her physically, verbally or by any other means pending a hearing in the principal divorce action
4. The respondent pay costs of suit.

Interim relief granted

Pending determination of this matter applicant is granted the following relief:

1. Respondent [*sic* applicant] be and is hereby entitled to take occupation forthwith of the parties matrimonial home at 519 Scone Drive, Killarney, Bulawayo.
2. The Deputy Sheriff be and is hereby authorized to eject respondent and all those acting through him forthwith from the said matrimonial home and seize the keys to enable applicant to occupy same.

3. Respondent be and is hereby prohibited from harassing applicant and making contact with her physically, verbally or by any other means.”

The background facts of this matter are the following. The parties are wife and husband. They have been married for over thirty-seven (37) years since 12 July 1975. Six children were born out of the union and all are now majors. On 10 May 2012, the applicant instituted divorce proceedings against the respondent. Before she instituted the divorce proceedings, the applicant had moved out of the matrimonial home and moved to her daughter’s house. She has apparently overstayed her welcome at her daughter’s place. She therefore made this application to return to the matrimonial house. She wants the respondent to be moved out of the matrimonial house because between 1992 and 1994 he exhibited violent tendencies towards her. She avers that he can stay at their farm some distance from Bulawayo. There is a fully furnished house on the farm. The respondent has transport to drive to the farm. She stated that in any event, he used to spend some weeks on the farm and come to the matrimonial home for a few days and return to the farm. He is on retirement. The applicant is running businesses in the city. The respondent on the other hand says she should stay with her daughters until the divorce is finalized or alternatively she stays on the farm (and he stays in the matrimonial home). He would, however, want access to his farming activities. It is trite law that a wife had limited rights to the matrimonial home that she and her husband set up. These rights are personal against the husband and can be defeated by the husband providing her with alternative suitable accommodation or the means to acquire one – *Cattle Breeders Farm (Pvt) Ltd v Veldman* (2) 1973 (2) RLR 261 (A) and *Maponga v Maponga & Ors* 2004 (10 ZLR 63 (H)). *In casu*, the respondent has not provided the applicant with alternative accommodation or means to acquire one.

Looking at the facts of this case, I find that the balance of convenience requires that I allow the applicant the use of the matrimonial house without necessarily ejecting the respondent. The parties will have to co-exist under the same roof. They have been doing so for a number of years when their marriage had ceased to exist as union. I will also make an order barring the respondent from harassing the applicant. The interim relief is amended to read:

“Pending the return date of this order, the applicant is granted the following relief:

1. Applicant be and is hereby entitled to take occupation forthwith of the parties matrimonial home at 519 Scone Drive, Killarney, Bulawayo.
2. The respondent be and is hereby prohibited from harassing applicant physically, verbally or by any other means.”

Accordingly, the provisional order is granted in terms of that amended draft.

*Webb, Low & Barry*, applicant’s legal practitioners

Judgment No. HB 217/12  
Case No. HC 3475/12  
X REF HC 1502/12

*Dube-Tachiona & Tsvangirai*, respondent's legal practitioners