

PLAXEDES NYAMADZAWO
versus
SHAKESPEARE NYAMADZAWO

HIGH COURT OF ZIMBABWE
MUNANGATI-MANONGWA J
HARARE, 16, 17 and 29 October 2017 & 23 November 2017

Divorce Trial

W Chagwiza, for the plaintiff
S Mpofu, for the defendant

MUNANGATI-MANONGWA J: Parties herein are husband and wife. The plaintiff seeks divorce and ancillary relief against her husband the defendant whom she married in accordance with customary law rites in 2004 and wed in terms of the Marriage Act [Chapter 5:11] on 19 April 2012. Several concessions were made at the pre-trial stage, resulting in only two issues being referred for trial namely, the maintenance of the children and distribution of one immovable property being the matrimonial home.

The following facts are common cause. The parties' marriage has irretrievably broken down and defendant is not contesting divorce. The parties have two minor children Precious Nyamadzawo (born 27 July 2005) and Pelagia Nyamadzawo (born 6 April 2008). Parties are agreed that the plaintiff should retain custody of the minor children and they are also agreed on access. The parties have a house in South Africa which is mortgaged and the mortgage having been recalled, parties are agreed that they will share the net proceeds on a 50:50 basis after the sale of the property and the deduction of what is due under the mortgage. It is also not in issue that the parties are to equally share proceeds from the sale of their other immovable property being Stand 21031, Elizabeth Park, Ruwa.

On his part the defendant has offered to pay for the children's tuition and school related requirements, contribute to their medical requirements, pay for the children's clothes twice a year and meet half the reasonable rentals and utility bills of leased premises that plaintiff will secure for herself and the minor children.

What the parties could not agree on which the court has to decide on is expressed as follows:

1. What is the fair and reasonable amount to be paid by the defendant as maintenance for the minor children?
2. Whether or not the donation by defendant to plaintiff of a half share in an immovable property known as Stand No. 1866 Mutoko Road New Marlborough, Harare was revoked? If so, how should that property be dealt with?

Plaintiff's case

Plaintiff gave evidence that she is currently unemployed and has no qualifications at all. She is currently staying with the parties' minor children in a cottage at the matrimonial home whilst the defendant stays in the main house. The eldest child Precious has finished grade 7 and is due to go to Form 1. She indicated that she would require \$500 per month per child to cater for transport which she said is between \$70 – 100 per month, groceries worth \$200.00, clothes at \$100.00 per month, \$60.00 for holidays and between \$30.00- \$40.00 for medication as the children are not always sick.

She indicated that her contribution to the children's welfare may not be monetary but she sources items from her father like maize, pork apart from taking care of the children. She indicated that she would still require the \$500.00 even if the defendant were to pay school fees as she has had problems with the transportation of the children to and from school when defendant would at the last minute say "make a plan" for the children to go to school. Further she indicated that as the defendant is not always available she would rather be given money for medical expenses, clothing and food.

It was the plaintiff's evidence that the defendant is a chemical engineer and is a shareholder at VBS Limpopo, a South African Company and is also involved with Command Agriculture as a consultant. This information was not challenged. She further indicated that although he is employed, she does not know the name of the company but she has been to the offices. Simply

because defendant is related to the persons he works with no-one has been willing to give her information on his earnings.

According to her experience when the parties were still in good books she was aware that he was earning between US\$4 000 - \$4 500.00. She confirmed that she had no evidence to confirm the defendant's income. It was the plaintiff's evidence that the defendant goes out of the country on business with flights and hotels paid for him.

Regarding the distribution of Stand No. 1866 Mutoko Road (hereinafter referred to as "the matrimonial home,") the plaintiff gave the following evidence: She maintained that she wanted 50% of the value of the property as defendant had donated same to her. It was her evidence that when she married defendant, the latter had already purchased the stand and started construction. The parties then resided in Msasa at a company house until they moved into the matrimonial home. The defendant then donated 50% of the matrimonial home to plaintiff as a way to assuage the feelings of the plaintiff for what he had done to her. Apparently the defendant had caused her arrest. This was a nasty incident where the defendant tricked the plaintiff to go to Johannesburg to look for a sewing machine of her choice. Upon her return she found the matrimonial home in South Africa locked, no-one was at home and defendant's phone was unreachable. Afraid of a kidnapping she reported to the police that the family was missing. Attempts to engage relatives in Zimbabwe did not yield results as defendant had influenced them. It was her evidence that the defendant later got in touch with her after 5 days, she then arrived in Zimbabwe only to be arrested upon arriving at the matrimonial home which again she found deserted. She was taken into custody, charged and eventually acquitted on a charge of threats of violence.

On 30 April 2014 the defendant gave a power of attorney to a church member who was also a family friend one Godfrey Munyamana to attend to signing of documents and appearing before ZIMRA officials for interviews in connection with a 50% donation and transfer of his 50% share of the matrimonial home to plaintiff. The special power of attorney was produced as exh 4. It was the plaintiff's evidence that the defendant duly signed a declaration by donor on 23 July 2014 donating the 50% share aforesaid which donation was accepted and a notarial deed of donation was duly executed upon. Same was produced as exh 4A. It was her evidence that the parties proceeded to ZIMRA offices for the necessary interviews however, the process hit a snag when it was noted by the ZIMRA officials that the defendant's name on the identity documents

differed slightly with the names on the title deed and the parties were sent back to rectify the anomaly. In cross-examination she indicated she could not push defendant *viz* rectification of his documents lest defendant would think she had an agenda.

The plaintiff denied any knowledge of the revocation of the donation insisting it was her first time to see the revocation document dated 23 July 2014. Plaintiff insisted that the donation was still extant as it had not been revoked and she had not been informed in that regard she was entitled to her half share. She was also not aware whether the defendant's agent was aware of the revocation.

In the event of the court finding otherwise, she indicated that she still wanted a share at most 42% of the value of the whole property. Whilst conceding that she found the defendant already owning the stand, when the parties married, she gave evidence that completion of the house occurred when parties were already married after which they moved in together. She claimed the parties put in floors, windows and worked the whole interior which was a shell. There were no doors, no bath tubs and the floor was granolic wherein they put ceramic tiles. She put her contribution thereto at 25%. She alleged that regarding the cottage which comprises of (three) 3 bedrooms, kitchen, lounge and dining room plus a bathroom and toilet, the parties built same together. In fact she had to finish construction of the cottage in 2011 when the defendant had already left for South Africa where the parties were relocating to. During cross examination she maintained the defendant did not finish building the main house on his own as to date interior work is still to be finished. Considering her contribution, she maintains she is entitled to 42% of the whole property in the alternative. Her evidence was that she made direct and indirect contributions by way of buying food and putting in money as she worked at People's Choice before going to South Africa and worked in the years 2010 – 2012 doing adverts for Gloria Foods and other businesses. She indicated that although she could not quantify how much she used, she put in money for the betterment of the family and whatever they were doing the parties did together.

Plaintiff highlighted that of late the defendant has brought several allegations against her having reported her more than six times to the police. In July 2017 the defendant reported her to the police for slaughtering a goat to feed the children and went on to allege that he had missed a beast and the plaintiff was a suspect. This allegation was never pursued by the police. At one time when she went to ask for food for the children, the defendant throttled her and in

freeing herself the defendant's shirt was torn and he rushed to the police to report. Since he drives by the time she got to the police he had already reported and police arrested her. She maintained that the pain and hurt she has experienced is such that she seeks to divorce the defendant.

The plaintiff was a credible witness who despite a very lengthy cross-examination withstood her ground. She never evaded any questions and her demeanour was such as to confirm to the court that indeed she was a credible witness.

The plaintiff called Mr Godfrey Munyamana as her witness. This witness stated that he knows both parties as they used to go to church together and he was home teaching them. It was his evidence that in 2014 the defendant approached him and requested him to act as his agent in a transaction where he was making a donation of 50% of the property in issue to his wife. He stated that defendant informed him that the donation was being made out of love as the wife had lost confidence and trust in him. The defendant could not see to the process himself as he was going to South Africa. He denied that the defendant was influenced by any church elders as no-one else was involved in this transaction apart from him.

The witness stated that he had proceeded to execute a deed of donation and identified both exh 4 the power of attorney and exh 4A the deed of donation. It was his evidence that the parties had proceeded to ZIMRA for interviews but due to an anomaly on defendant's identity card they could not finalise the process. His evidence buttressed that of plaintiff on the issue. The defendant went back to South Africa. Mr Munyamana told the court that in July 2017 whilst this matter was already underway he was informed by the defendant at a meeting that he no longer wanted to donate 50% of his share to plaintiff. The reason being that plaintiff was now demanding 50% of all the properties they had acquired together. The witness maintains that is the only reason that defendant gave for the purported revocation.

It is this witness that revealed that on the 7 October 2017 defendant gave him an affidavit dated 24 July 2014 which purported to revoke the donation. Although he had seen the document in July 2017 after the pre-trial conference had been done the defendant had told him that his new legal practitioners had advised him that the revocation was not on file so he wanted to support his case. He clearly stated that the purported revocation produced in court was fraudulent as it was signed in his presence on 7 October 2017 but backdated to 23 July 2014. He even went on to challenge the conduct of the commissioner of oaths who attested to the signing of the document.

The witness maintained that defendant had not informed him of the revocation in 2014. Suffice to state that the issue of backdating the revocation document to July 2014 was supported by the defendant in his evidence as shall be canvassed later. This witness was very impressive. He gave his evidence well, he impressed the court as an impartial witness who was bent on just narrating to court what was in his knowledge without taking sides.

The Defendant's case

The defendant gave evidence that he is a chemical engineer with 18 years of experience. He was employed in South Africa as a production engineer until December 2016 when he was laid off on a month's notice salary and given a package of US\$15 000. He paid off loans and remained with US\$5000.00 which he has been using to date but has nothing left. Currently he works for Leo Mugabe and he receives \$20.00 for fuel and is provided with lunch. In addition he gets a pension of \$79.00 that is all he is surviving on. He further indicated that as a result of his financial situation he has been unable to pay the children's fees in full and he still owes \$120.00 terms fees.

Regarding the nature of work he does with Leo Mugabe, he stated that he goes to work 2 to 3 (three) times a week and is involved with command agriculture. He was tasked to set up agreements between a South African company and the following fertiliser companies: ZFC, Windmill (Pvt) Ltd and Zimphos. This task he has since completed. Further he was tasked to do a feasibility study in South Africa to find the cheapest fertiliser sources that have good quality products. He indicated that there was no arrangement as to how he was to be paid but it is his belief that after succeeding and the fertiliser starts coming into the country he will get some form of remuneration and hopes to get a government level salary. He revealed that he works for a company known as IEG owed by Leo Mugabe and refused to be called a consultant on the basis that he does not only do consultancy but follows Leo's programme as regards what to do. He is still to finalise his benefits with Leo.

It is against this financial background that he stated that he is able to offer \$50.00 per child per month, pay school fees for the children which is \$220.00 per term, attend to the children's health issues as and when they arise, buy clothes twice a year, pay up to \$150.00 as contribution towards part of their rentals for a 2 bedroomed house, lounge, dining room, kitchen and ablutions. He challenged the plaintiff's requirements for the children as exorbitant.

On the issue of the matrimonial home, he gave evidence that whilst in Europe he bought two (2) stands through his brother one of which is stand 1866. There was an amount remaining from the purchase of stand 1866 and this was what was used to start building stand 1866 the matrimonial home. As the two stands were in his brother's name a deed of donation had to be executed to clarify ownership of the two (2) stands. A deed of transfer exh 5 in defendant's name was produced, the contents of which supported the aforesaid history of the stand. Of note however is defendant's summary of evidence which stated that stand no. 1866 had been awarded to him when he divorced his former wife, which version he did not maintain in his evidence in chief.

Pertaining to the donation of 50% share of the immovable property in issue the defendant had this to say: The parties had problems as a couple whilst in South Africa due to death threats from an associate of his wife who claimed was an undertaker. The threats came after the man had phoned to apologise that he was sorry he did not know that the wife was married. He left South Africa for Zimbabwe at midnight with the children without anyone knowing. Suffice to say this corroborates the plaintiff's story that she found the home deserted with all family members missing. He does not deny causing the wife's arrest in Zimbabwe on charges pertaining to deaths threats. When in Zimbabwe, the parties used to attend the Church of Jesus Christ of Latter Day Saints where a family would be given a teacher to help understand the bible and counsel the couple, Mr Munyamana was given to this family. It is this church elder who told him that he once had problems with his wife because her name was not listed on their properties. He understood that and to use his words "sought to use that as a technic" to sort out his own family problems. This was in April 2014."

He proceeded to appoint Mr Munyamana as his agent and granted him a special power of attorney on 30 April 2014. He stated that he had not discussed the percentage of the donation with Mr Munyamana and when he noted that 50% was stated as the extent of the donation in the Notarial deed he was not happy as he had children and those of his brother so plaintiff could not get 50% of what he had worked to build for 30 years. With such a realization he went to his legal practitioners Mrs Sande who advised him that he could revoke the donation.

The witness confirmed plaintiff's story that after the execution of the deed of donation in July 2014 parties had gone to Zimra for interviews wherein they hit a hurdle as defendant's names could not match. He confirmed they were sent back to rectify the anomaly. It was his evidence that

he left for South Africa without doing so. On revocation the defendant gave the following evidence as the reasons for revoking the donation:

- a) He had not discussed 50% with his agent so on realization that the power of attorney stated so, he decided to revoke for the sake of his children and those of his brother this was in April 2014.
- b) When he went to Zimra offices, the official asked him whether he had children and that is when it dawned to him that he could not donate the 50% and he revoked the donation in July 2017.,
- c) That he revoked because his wife let him down, he revoked because of her conduct.

Defendant's evidence was that he communicated to Ms Sande who was in partnership with Ms Atukwa his intention to revoke. He paid for it, but Mr Munyamana the agent was to do the cancellations since he had to go back to South Africa. When however he returned from South Africa he visited Ms Atukwa his legal practitioner who by now had separated with Sande but she still had the old donation papers. He advised her that she had revoked the donation wherein he demanded a "clean document" revoking the donation signed by him or his agent. New documents for revocation were produced and Mrs Atukwa advised him to put a 23 July 2014 date although it was in October 2017. Same was produced as exh 7.

On the reversal of the special powers granted to Mr Munyamana, the defendant admitted in cross-examination that the affidavit to that effect was done in October 2017 although he had revoked the donation in 2014. He further indicated that the Commissioner of Oaths told him not to put a date on the affidavit. The defendant argued that although the affidavit to revoke and the revocation of donation were done in October 2017 the act of putting a July 2014 date was not backdating as the date was known. He thus insisted there was no backdating as the date was known. He thus insisted there was no donation to talk off.

On the alternative claim for a share of the property apart from grounds of donation, the defendant stated that the plaintiff is entitled to 20% of the value of the property. Whilst not disputing that same is the matrimonial home, he considered it unfair for the plaintiff to claim 50% of the property considering that she had got 50% of everything they have and even more of the movables. He viewed the claim as a plan by the plaintiff to raise money. His evidence was he bought the stand alone, did most if not all the developments and the work done on the main house

after parties were married was only renovations due to vandalism and wear and tear and not construction. As for the cottage whilst the same was built during the tenure of the parties marriage, he had done preparatory work for the foundation and half of the roofing tiles were left overs from the main house. He produced invoices and a quotation for glass, paint and some roofing materials with dates ranging from 1996 to 2000 before parties got married. He further gave evidence that he had paid the plaintiff's debt to one Crispen Chinungo in the sum of \$5 000.00 in 2016. He produced two (2) affidavits by the creditor acknowledging receipt of a total sum of \$4 000.00 from the plaintiff. A local remittance form also produced showed a direct transfer of \$1 000.00 from the defendant's account to the debtor's account. This was the only document showing that the defendant paid \$1 000.00 to the debtor. On being asked why he would pay the debt, he stated that the police told him it was a criminal case and since the debt was created by his wife he had to pay. This was however denied by the wife who indicated that she paid for herself as for the \$1 000.00 direct transfer, he had asked her for cash equivalent. In maintaining that the wife wanted to get as much from him defendant said that the plaintiff confessed that when she said she owed Crispen Chinungo the \$5 00.00 she erred as he did not give her that amount, the understanding was that the two would share.

It also emerged during cross-examination that the defendant had purported to have sold the Ruwa immovable property. Two agreements of sale dated 22 September 2017 were produced to court and in one agreement the property was allegedly sold for \$10 000.00 and in another for \$25 000.00. In both transactions the defendant purported to have received payments. The agreements and the acknowledgements of receipt of payment were before the court contained in the plaintiff's bundle of documents tendered in court. The defendant had in an affidavit filed in opposition to an urgent application in HC 9179/17 insisted that the stand had been sold and he had secured plaintiff's \$5 000.00 share being 50% of the proceeds. He however sought in one instance to say it was the property developer who had sold the stand to someone and he met with an authority of the scheme and the agreement was cancelled, he then changed to say he cancelled the sale himself. The defendant was at pains to explain the two sale agreements and the duly signed receipts of payment. The only conclusion to be made is that he had forged the agreements of sale as he could not have sold the property twice on the same day and received the two purchase prices. In any

event he then said it is not possible to have sold the stand in such a manner. The defendant did not call any witnesses.

I found this witness to be an untruthful witness who could unashamedly lie under oath and was often caught up in the web of his lies to an extent that some of his evidence became incomprehensible. Typical examples being the explanation about the sale of the Ruwa property, which he had confirmed in an affidavit under oath and later sought to retract, the finalisation and revocation of the special power of attorney and the donation, his interaction with and the roles of Ms Sande and Ms Atukwa his legal practitioners. He is simply an unreliable witness who prevaricated from one position to the other, sought at all costs to paint the plaintiff with a black brush as a dangerous drug addict, a potential murderer and an irresponsible person. The witness was not impressive at all and his evidence had holes which impacted upon the value thereof.

Analysis

It is trite that children have to be maintained by both parents to the best of each one's ability and at the level of the parties lifestyle had the marriage continued. In the determination of the appropriate maintenance amount the court is guided by the means of the parties and the children's requirements. In that regard it is important that each party lays bare and present their earnings by openly declaring same to court. The court accepts that the plaintiff is not employed but has indicated that her contribution would mostly be in kind as assisted by her father. Apart from taking care of the children (she has no maid) she said she can provide maize meal and whatever her father can assist with. It is common cause she has no formal training but indicated if capacitated she can earn a living as whatever she did in the past she relied on talent not formal training.

The defendant on his part has not been candid with the court. He is a highly qualified chemical engineer who has the possibility of working in South Africa he only needs to renew his visa. He is involved in a good consultancy business where he has concluded contracts between Zimbabwean Fertiliser companies and a South African Company. He admitted to flying to destinations and being accommodated by a company he considers to be a sponsor. To think he has since February 2017 only benefited from lunches and \$20-00 per month provided for fuel and a paltry pension of \$79.00 is not only unimaginable but simply impracticable. Defendant has offered to pay school fees and related expenses, pay half the rentals, buy clothes twice a year and pay bills. How he could manage remains a mystery if his evidence on his financial status is to be accepted.

Only a single conclusion remains he earns much more. I will take it that his earnings would be in the region of between \$4000 - \$4500.00 as indicated by the plaintiff which evidence was not challenged. This is supported by his own admission that he exclusively concluded contracts between all the three fertiliser companies in Zimbabwe with a South African company and did due diligence on sourcing of fertiliser in South Africa for Command Agriculture. To think that he has not been rewarded for such a breakthrough and is only to discuss with Leo Mugabe his package is unbelievable. Further, a sponsor in South Africa who has been footing airfares and hotels cannot do so without giving allowances. For a defendant who has a 5 year contract with a South African company to remain in Zimbabwe can mean that he is financially comfortable as one would be with the job he explained to court.

In view of those findings, the plaintiff's claim for bus fare and lunch of \$100.00 per child per month is reasonable more so when the defendant admitted during cross-examination that \$100-00 is very close to what they require and only the range differs. I am aware that defendant would sometimes take the children to school and then give them \$5 to return home. The fact that he would sometimes be away coupled by the unchallenged evidence of the plaintiff that he would on short notice advise the plaintiff to make a plan is such that there is need for certainty viz the children's transportation. In that regard the defendant shall pay \$100.00 per month to the plaintiff towards each child's bus fare and lunch.

On the rentals for the children's accommodation parties are agreed that a two bedroomed cottage with a lounge, a dining room and a kitchen plus ablutions would accommodate the plaintiff and the children. The issue before the court is what would be reasonable rentals for such accommodation. Currently the plaintiff and the children are in a 3 bedroomed cottage with a lounge, dining room and a kitchen. None of the parties produced an estimation of rental valuation by an estate agent. The plaintiff maintained that rentals for accommodation of the nature required by the family are around \$500.00 per month whilst the defendant suggested between \$300.00 - \$400.00. He wants to contribute \$150-00 for accommodation. The plaintiff wants \$100.00 for water & electricity whilst the defendant says it's around \$60.00 for water and electricity. Given the area that the parties are staying in, I am persuaded to accept \$500.00 as the average rentals for a cottage in the area that parties live in. That being so the defendant will pay \$250.00 as

contribution towards the children's rentals and \$80.00 for water and electricity being the average of the two figures that the parties provided.

The plaintiff had claimed a total of \$500.00 per month per child consisting of the following:

\$100.00 for bus fare and transport

\$100.00 clothes per month

\$60.00 holiday allowance

\$30.00 - \$40.00 medical expense/provision

\$200.00 for groceries & toiletries

It is common cause that groceries have gone up and the offer by respondent to pay \$50.00 per child per month basing on what he purports to be their needs of \$100.00 to \$150.00 is not realistic. At the same time groceries of \$200.00 per child seems to be on the high side moreso considering that the court is working on an assumed salary. I will grant \$160.00 per month per child to cater for groceries. Equally a claim of \$100.00 per month per child for clothing translates to clothing worth \$1200.00 per year. These are children who go to school and not adults who go to work wearing work clothing daily, I do not believe they need that much for clothing. Accordingly I will reduce the amount to \$50.00 per month per child. Due to the acrimony between the parents it is best for the mother to buy the clothing moreso when they are girl children and she stays with them hence would know their requirements.

The children are not on medical aid and the provisional amount claimed under that heading of between \$30.00 to \$40.00 per month is reasonable given that medical care in the absence of cover by medical aid is expensive. Accordingly the defendant shall pay \$40.00 per child per month for medical purposes.

The defendant made it clear that when he was employed, by Zimphos the children used to go on holidays and he appreciates the importance of celebrating birthdays. The plaintiff has claimed a monthly amount of \$60.00 per child for holidays. This translates to \$720.00 per year which cannot cater for a holiday outside Zimbabwe but for local holidays. Whilst this amount is reasonable one cannot lose sight of the fact that the defendant's former employer used to provide for these which is no longer the position. I find it proper to reduce the amount to \$50.00 per child per month in any case this is a provision. The cumulative amount awarded per child therefore

amounts to \$400.00 per child per month excluding accommodation, fees and bills which have been dealt with separately.

Regarding the distribution of the matrimonial home the pertinent question is whether or not the donation of 50% share of the matrimonial property to the plaintiff was revoked. While it is settled law that a donation *inter vivos*, once made is irrevocable, except in a few instances, notably ingratitude, a spouse may revoke a donation to the other spouse at any time. See *Taylor v Taylor* 2008 (2) ZLR 165 (S). Thus where a donee has shown ingratitude the law allows revocation. TSANGA J in *Mukudu v Mukudu* HH 228/17 stated examples of ingratitude to include “personal violence against the donor; treacherous deeds causing the donor great pecuniary losses which extensively diminished his estate; exposure to danger threatening the donor's life; and a breach of written or oral undertakings of the donee.”

Given the legal position as espoused above the defendant had an inherent right to revoke in certain circumstances. A donation being a contract there has to be a basis for revocation followed by the act of revocation itself. In *casu*, the defendant gave various reasons for the revocation each time changing goal posts. He indicated that his agent had stated in the deed of donation 50% as the share to be donated which they had not discussed hence he had to revoke, he realized that he had children and those of his brother hence he could not lose to plaintiff what he had worked for 30 years and that he revoked because his wife had let him down. The first two reasons would not meet the test as they do not point towards ingratitude. In any case the facts before the court point to the fact that the defendant was not being honest. The defendant does not deny that he appointed Mr Munyamana as his agent and attorney and the special power of attorney he signed clearly states that the agent was to deal with a 50% share of the property which he donated to his wife. See Exh 4 which he duly signed on 30 April 2014. Equally the issue of the children does not hold as he already knew that he had children when he made the donation so there was no new development if anything the defendant was groping and clutching at straw as a defence mechanism to escape the repercussions of his actions. Suffice to say the defendant signed the declaration by donor on 23 July 2014 nearly two months after he signed the power of attorney which again reflected the donation as a 50% share of the concerned property. Further after the signing of the notarial deed of donation the defendant admits that he went together with the donee to ZIMRA offices and it is

the issue of his identity documents that stalled the process. Having participated in these three processes at different times the defendant's explanation becomes improbable.

Apart from a bald averment that the defendant revoked the donation because the plaintiff let him down because of her conduct the said conduct was never placed before the court. I hasten to add that the alleged South African incident happened before the donation. If anything the donation was made soon after the plaintiff's acquittal in April 2014. The ingratitude that entitles a donor to revoke a donation has to be established because the general rule is that a donation *inter vivos* is irrevocable except in special circumstances hence the need to establish the exceptional circumstances.

Even assuming that there was cause to revoke (which certainly there is not) the question is did the donor revoke. This is a factual matter that once again the donor had to establish. The plaintiff maintained that she was not aware of the revocation and the defendant did not say that he told her of the revocation. The defendant's agent further confirmed that defendant never mentioned the revocation to him until sometime in 2017 after the pre-trial conference meeting when defendant indicated to him that he was revoking the donation because plaintiff wanted a 50% share of everything the parties had. The defendant had difficulty in explaining to court at what stage he revoked the donation. Of note is that the declaration by donor was executed on 23 July 2014 the very day which he purports to have revoked the same. Yet the parties still went to ZIMRA to process transfer in the company of plaintiff and the agent. If the defendant's evidence were to be accepted as true how would the defendant not inform the plaintiff and the agent of the revocation when the parties were together.

Most damning in my view are the following points: that the document produced as the revocation of the donation was prepared and signed in or around the 6th October 2017 hardly 7 (seven) days before this matter was to be heard at trial and then dated 23 July 2014. The same applied to an affidavit that revoked the agent's powers. This was confirmed by Mr Munyamana who claims he video recorded the whole process and was not pleased with this, openly telling the court that the commissioner of oaths who also took part in processing affidavits for defendant was unprofessional. The defendant did not deny that the documents were endorsed a July 2014 date although they were being signed in October 2017. His argument that this did not amount to backdating a document as the endorsed date is when he revoked, is without merit as the act clearly

amounts to backdating. The revocation says “signed at Harare this 23rd day of July 2014” when in fact it was signed in October 2017 more than 3 years later. This was clearly fraudulent as the document in the absence of evidence, would purport that it was signed in 2014 when it was prepared and signed in 2017. When read together with the two agreements of sale in which the defendant purported to have sold the Ruwa property and received money for it when such thing had not happened, such occurrences point to an inescapable conclusion that the defendant is a calculative dishonesty individual whose conduct borders on criminality. I find that there was no revocation of the donation and any purported acts to revoke were null and void given the manner in which the revocation was executed.

Further an attempt to alienate the plaintiff’s accrued inherent rights in the property when pleadings had been closed and the rights were the subject of litigation is not permissible at law. See *Chikadaya v Chenga & Others* 2010 (2) ZLR 366 (H). That the donated share had not yet been transferred to the plaintiff is of no consequence. In any case the process was only stalled because the defendant had to sort out the anomaly with his name. Apart from that, Section 10 of the General Law Amendment Act [Chapter 8:07] provides that:

“.....No contract of donation shall be invalid solely by reason of the fact that it is not registered or notarially executed”

Accordingly I find that there was no revocation of the donation by defendant to plaintiff of 50% share of the immovable property known as Stand 1866 Marlborough Township 23 of Marlborough. Having arrived at that decision it is not necessary to then consider the alternative claim.

In the premise the following order is made

1. A decree of divorce be and is hereby granted.
2. The defendant shall pay the sum of \$360-00 per month per child as maintenance for the minor children Precious Nyamadzawo (born 27 July 2005) and Pelagia Nyamadzawo (born 6 April 2008) until they turn 18 years old or become self-supporting whichever occurs earlier.
3. The defendant shall pay \$40.00 per month per child as contribution towards the minor children’s medical expense and such amount to cease should the defendant place the minor children on a medical aid scheme.

4. The defendant shall pay to the plaintiff \$250.00 per month as contribution towards the accommodation for the minor children stated in clause 2 and in addition
5. The defendant to pay \$80.00 for water and electricity as contribution towards the rates for the minor children.
6. That the plaintiff is entitled to 50% share in Stand 1866 Marlborough Township 23 of Marlborough as per the deed of donation executed by defendant in 2014.
7. Defendant to pay costs.

Kwenda & Chagwiza, plaintiff's legal practitioners
Munangati & Associates, defendant's legal practitioners