

IN THE HIGH COURT FOR ZAMBIA

2021/HPF/D 130

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Divorce Jurisdiction)

BETWEEN:

PATRICIA MWAPE MUNYORO

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
FAMILY & CHILDRENS COURT DIVISION

PETITIONER

AND

GODFREY MURANGANWA MUNYORO

28 JUN 2023

RESPONDENT

REGISTRY

P.O. BOX 50067, LUSAKA

BEFORE: HON. R.C. MBAMBI

For the Petitioner: Mr. F Mudenda, Messrs Chonta Musaila and Pindani Advocates

For the Respondent: Mr. S. Nalumino, Messrs Simeza Sangwa and Associates

JUDGMENT

Cases referred to:

1. **Mathews Chishimba Nkhata vs. Esther Dolly Mwenda Nkhata SCZ/8/017/2015**
2. **Watchel v Watchel (1973) 1 ALL E.R 829**
3. **Fabion Ponde v. Charity Bwalya SCZ/51/2011**
4. **Rosemary Chibwe v. Austine Chibwe (2001) Z.R. 1**
5. **Annie Scott v. Oliver Scott (2007) Z.R. 17**
6. **Pettitt v Pettitt [1970] A.C. 777**
7. **Fribance v. Fribance (1957) 1 ALL ER 357**
8. **Sanikonda Phiri v. Elestina Zulu (2012) Z.R. Vol. 3**
9. **Connie Munalula v. Donald Mwaba SCZ/8/012/2016**
10. **Muyoyeta v Muyoyeta Appeal No. 104 of 2005**

**11. Mike Hamusonde Mweemba vs. Kamfwa Obote Kasongo,
Zambia State Insurance Corporation Limited (Intended Joinder)
(2006) Z.R. 101**

Legislation referred to:

The Matrimonial Causes Act No. 20 of 2007

Materials referred to:

Halsbury's Laws of England

This judgment was scheduled to be delivered on 21st October, 2022. The delay in delivering this judgment is regrettable. The same was due to circumstances beyond the court's control.

This is a judgment on property settlement. The parties got married on 26th June, 1993 and were divorced on 16th August, 2021. According to the petition for divorce, there are three children of the family namely Kudakwashe Munyoro aged 28 years (male), Tashaya Munyoro aged 26 years (male) and Kapambwe Munyoro aged 24 years (female) and that all have completed their tertiary education.

Consequently, the petitioner filed an application and affidavit in support for property settlement which she deposed dated 1st December, 2021. The gist of the averment is that during the marriage, the parties acquired matrimonial property and that the property subject of property settlement is as follows:

- Farm No L/10198 Lusaka West, Lusaka
- Stand 294 of stand 8137 Helen Kaunda, Lusaka
- Plot LN-78872/1, Serenje
- Plot LN-78872/2, Serenje
- SD No. 149 of SD No 6 of SD B of Farm No 378 Chelston Green (Salama Park), Lusaka
- Stand 31181/M SD 1463 Star cottage Lusaka West, Lusaka

- Shop No. 56, Helen Kaunda
- Stand No. 2492 Mulubila, Kabwe
- Stand No. 8797 Mobile, Kabwe
- Plot No. 2 Kasanda Township, Kabwe
- Kasanda Market, Kabwe
- Plot SER/1720, Serenje
- Plot No. 5472 Great East Road Chisutu, Chipata
- 96,983 shares in REES
- Respondent's gratuity
- 90,000 shares in CEC

Movable and Other Assets

- Man truck ABU 2992 ZM
- Scania Rigid Truck ABV 2815ZM
- Leyland Daf Truck ABL1055
- Assortment of Daf Truck spares
- Mitsubishi Colt ACT 5903
- Mitsubishi Canter BAD 6741
- Mitsubishi Canter BAD 6741 (off cut chassis)
- Massey Ferguson Tractor ALJ 7586
- Welding Machine
- Freezit making machine
- Disc Harrow
- Egg incubator

Liabilities

- The outstanding payment for the mortgage for the flats in Salama Park was K639, 200.00 in June 2021.
- Agribusiness loan and outstanding repayment of K451, 325.00

The petitioner proposes settlement of the property in the following manner:

That the six properties listed below be advertised in the print electronic media and then sold through a reputable agent or auctioneer which are:

- Farm No L/10198 Lusaka West (jointly owned).
- Stand 294 of stand 8137 Alick Nkhata Road, Helen Kaunda (marital home).
- Stand 2492 Mulubila, Kabwe.
- Plot No 5472 Great East Road Chisitu, Chipata.
- Plot 2, Main Kasanda Road, Kabwe (jointly owned).
- Kasanda Market, Kabwe.

The petitioner avers that:

- The proceeds of the sale be split in half between the petitioner and the respondent, save for Farm No. L/10198/M Lusaka West.
- That the proceeds from the sale of farm No. L/10198/M Lusaka West should be split 60% for the petitioner and 40% for the respondent to assist offset the mortgage on the Chelston Green (Salama Park) property which is jointly owned by the parties.

It is deposed that the Lusaka West property be shared in the said proportion on the basis that the acquisition of the asset was with the assistance of the petitioner's brother and also the contribution by the petitioner as she constructed the manager's house and put up the second bore hole. Further, on the construction of the main house, her contribution was 80% while the respondent contributed 20% which was towards the barns and installation of phase three electricity. She referred to exhibits collectively marked PMM1

being copies of receipts for various payments for farm development at Lusaka West property.

Regarding the Chelston Green (Salama park) property, it was deposed that the same is still under mortgage and that the petitioner's sister was involved in helping to restructure the mortgage and the petitioner continues to pay the same mortgage to date. She referred to exhibits collectively marked PMM2 being various repayment receipts and mortgage agreement for Chelston Green (Salama Park) property.

That the property in Helen Kaunda was the matrimonial home developed by both parties. It was averred that during the construction of the matrimonial home on the Helen Kaunda property, the petitioner was responsible for rentals at the rented property where the family lived and also directly contributed to construction expenses of the property as well as renovations and maintenance. She referred to exhibits collectively marked PMM3 being copies of lease agreements, letters from employers relating to rent and receipts from purchases of construction materials.

Regarding the Serenje properties, it was deposed that they are two properties and the petitioner and respondent each own one with title in their names.

That Stand 31181/M SD 1463 Star Cottage Lusaka West, was a substitute Stand given by the Ministry of Lands in 2014 to replace the plot that was purchased at Mass Media. The original plot was acquired by the petitioner in 2006 and was replaced by the respondent's name.

It was deposed that the Kabwe property in Kasanda is jointly owned and should be shared equally between the parties. She referred to exhibits collectively marked PMM4 comprising a copy of the contract of sale detailing the amount expended to acquire the plot.

Regarding the Chipata property, it was deposed that it was developed whilst the respondent was working in Chipata and during that period, the petitioner

was managing the household in Lusaka and the farm in Lusaka West meeting all expenses for the household and running costs for the farm while the respondent focussed on building the Chipata property. That therefore, the property should be shared equally and she referred to exhibits collectively marked PMM5 which are documents relating to the Chipata property. The petitioner averred that the same applies to **Stand 2492 Mulubila** which should be shared equally between the parties as she contributed materially and in kind to the construction of the said property. To that effect, she referred to exhibits collectively marked PMM6 expenses paid for the property.

In her averment, the petitioner proposes that she be allocated the following properties:

- 258 Hectares of Farm Plot No LN 78871/1 Serenje
- 24 Cattle
- 12,652 Hass Avacado Plants
- Stand 31181/M SD 1463 Star Cottage, Lusaka West
- SD No. 149 of SD No. 6 of SDB of Farm No. 378 Chelston Green (Salama Park)
- 90,000.00 CEC shares
- Mitsubishi Canter BAD 6741
- Mitsubishi Canter (off cut chassis)
- Massey Ferguson tractor ALJ 758610
- Man truck ABU 2992 ZM
- Egg Incubator
- Household fittings (bathtubs and toilets)
- Roofing materials
- 5 x 25kg of Soya Bean seed
- 01 Brown 3-piece sofa set which is in the physical possession of the petitioner
- 01 white double wardrobe

- 01 medium sized bed which is currently in the physical possession of the petitioner
- 01 large deep freezer which is currently in the physical possession of the petitioner
- Medium deep freezer
- 01 big upright fridge
- 01 four plate stove which is currently in the physical possession of the petitioner
- 01 two plate gas stove
- 01 large flower pot
- 05 medium flowerpots
- 01 Tube TV and decoder
- 01 musical machine
- Washing machine which is currently in the physical possession of the petitioner
- Brown carpet which is currently in the physical possession of the petitioner
- Black Coffee Table which is currently in the physical possession of the petitioner
- 01 beige coffee table
- 01 dining table with four chairs

For the respondent, the petitioner proposes that he be allocated the following properties:

- Plot No LN-78872/2 (Serenje)
- 24 cattle
- 12, 652 Hass avocado plants
- Plot SER/1720 Serenje
- Stand 8797 Mobile, Kabwe
- 96,983 REES Shares

- 2019 and 2020 gratuity
- Scania Truck ABV 2815 ZM
- Leyland Daf Truck ABL1055
- Daf Truck spares
- Mitsubishi Colt ACT 5903
- Welding machine
- Disc harrow
- Freezit making machine
- Shop 56 Helen Kaunda
- 5 x 25kgs of soya bean seed
- Kitchen counter granite top
- 01 mukwa door
- 01 flash door
- 01 black 3 piece sofa set
- 1 brown 3 piece sofa set
- 01 brown room divider
- 01 marron room divider
- 1 big black pedestal upright fan
- 01 Orthopedic queen size bed
- 01 double bed
- 01 medium sized bed
- 01 upright deep freezer
- 01 medium sized deep freezer
- 01 small fridge
- 01 four plate stove
- 01 water grill
- 03 large 70 x 40m decorative mirrors
- Assortment of curtains and curtain nets
- 01 bookshelf
- 01 plasma TV with decoder and dish
- 01 music machine

- 02 office chest of drawers
- 01 genset
- 01 Electric blender
- 01 maroon and beige carpet
- 01 dark brown carpet
- Farm implements and sprayers, drip irrigation pipes and hose pipes
- 01 large brown coffee table with matching smaller four tables
- 01 small brown coffee table
- 01 upright small square laundry table
- 01 brown dining table and five chairs

The petitioner deposed that the rationale for the proposal on property adjustment is based on various considerations pertaining to her contribution to the acquisition of the properties. For instance, she averred that she was the one meeting household expenses and paying school/university fees for the last born child to enable the respondent focus on the projects as well as contributed cash and materials to the projects. In that regard, she referred to exhibits collectively marked PMM7 being various loans obtained by the petitioner and payslips reflecting deductions for loan repayments.

It was further deposed that in 2006 and 2007, the petitioner was away for studies in Europe and some of her allowances were released to the respondent for family projects. That during the period January 2013 to September 2017, the respondent was not in gainful employment. All financial requirements by two of their children who were university students, household expenses, farm house construction works in Lusaka West, renovation and other expenses were met by the petitioner. The respondent paid farm workers in Serenje and other farming related expenses from the rental income of properties in Kabwe.

In concluding, the petitioner deposed that the respondent currently resides in the matrimonial home in Helen Kaunda and controls a majority of all the family assets while the petitioner has temporal shelter at her sister's residence and that she desires to settle down at the conclusion of this case.

The petitioner filed submissions dated 16th September, 2022. It was submitted that the court has jurisdiction to make property adjustment pursuant to section 55(1) of the Matrimonial Causes Act, 2007. I was referred to, *inter alia*, the case of **Mathews Chishimba Nkhata vs. Esther Dolly Mwenda Nkhata**¹, in which the Supreme Court stated that:

The first thing that any court considering a property adjustment application is to ask itself whether the property concerned is family property and thus amenable to property settlement.

In **Watchel v Watchel**², family property was described as:

All properties acquired by the parties during the subsistence of the marriage which are intended to be continued provision for the family as a whole.

I was also referred to the case of **Fabion Ponde v. Charity Bwalya**³, in which the court stated that:

“...We underscored the point that it does not matter that financial contribution was not made by both spouses to the acquisition or development of family assets; what matters is that the parties to the marriage make contributions either materially or in kind towards those assets...

It should follow that in a property adjustment application, a spouse making the application should demonstrate his or her own contribution to the matrimonial property either materially, financially or in kind. This, the applying party can do by showing how he or she contributed in concrete terms to the acquisition or development of the property by, for example,

giving the necessary moral and financial support to the respondent; buying building materials needed by workmen at the site; supervising workmen while the spouse is away raising resources, or that he or she paid school fees, medical bills, and met other expenses which should have been borne wholly or in part by the respondent and thereby helped the respondent channel resources to the property.”

Still on the power of the court in property adjustment cases, I was referred to the case of **Rosemary Chibwe v. Austine Chibwe**⁴ in which the Supreme Court held, *inter alia*, that:

In making property adjustment or awarding maintenance after divorce, the Court is guided by the need to do justice taking into account the circumstances of the case.

Regarding the Lusaka West Farm jointly owned by the parties, it was submitted that it ought to be shared equally. It was contended that both parties contributed both financially and in kind to its development. That therefore, the said farm should be shared between the parties in accordance with the case of **Annie Scott v. Oliver Scott**⁵, in which the Supreme Court held, *inter alia* that:

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- a. Any property purchased by the spouse with his or her own money presumptively belongs to the purchaser.*
- b. Land that is held jointly is governed by the principle of *jus accrescendi*, which literally means the right of survivorship between joint tenants.*
- c. In view of the fact that the interest of the appellant and that of the respondent in the property is indivisible, it was wrong, in the absence of fraud or mistake, for the learned Deputy Registrar to award one or more structures to the appellant. The appellant and the respondent are beneficiary entitled in equal shares.*

That therefore, the said property should be valued by a valuation firm agreed by both parties or by a Government Valuation Department whose cost should

be borne by both parties equally, thereafter, should be sold and proceeds shared equally between the parties.

Coming to the matrimonial home on Plot No. 294/8137 off Alick Nkhata Road registered in the respondent's name, it was submitted that it too ought to be shared equally between the parties as both parties contributed to its development. It was contended that for the 28 years of marriage, the petitioner made both direct and indirect contributions to the acquisition, development and maintenance of the house. In that regard I was referred to the case of **Mathews Chishimba Nkata v. Esther Dolly Mwenda Nkhata**¹ in which the Supreme Court stated that: -

It is settled that in understanding property adjustment courts do accept non-financial contributions by a spouse in the form of, for example, tending the house, providing for various family needs and thus relieving the other spouse of some domestic and financial burdens. Such contribution, like financial contribution, entitles a spouse to a share of the matrimonial property ostensibly purchased or acquired solely by the other spouse. This consideration in the area of post-divorce settlement of matrimonial property accords with the need to ensure equitable distribution of family property. In this regard, the court views the contribution of the parties to the acquisition of property broadly.

I was also referred to the case of **Pettit v. Pettit**⁶, in which the court held that:

Where a couple by their joint efforts get a house and furniture intending to be a continuing provision for them both for their joint lives, it is a family asset in which each is entitled in an equal share. It matters not in whose name it stands, or who stays for what, or who goes out for work or who stays at home. If they contribute to it by their joint efforts, the prima facie inference is that it belongs to them both equally.

On the same principle, I was referred to the case of **Fribance v. Fribance**⁷ in which it was stated that:

Contribution in kind by a spouse to property acquired during a marriage was sufficient to entitle the spouse to a share of that property.

Regarding the adjustment of household goods, I was referred to the case of **Annie Scott v. Oliver Scott**⁵ in which the Supreme Court held, *inter alia*, that:

Household goods provided they were bought during the subsistence of the marriage by either of the parties should be shared equally.

In concluding, I was called upon to consider the earning capacity of both parties of which I was referred to the case of **Sanikonda Phiri v. Elestina Zulu**⁸ in which the High Court held, *inter alia*, that:-

- a. *Property adjustment should take into account the earning capacity of both parties, and the financial resources which each of the parties to the marriage has or was likely to have in foreseeable future.*
- b. *The court is also required to take into account the financial obligations or responsibilities which the parties have or are likely to have in the foreseeable future.*
- c. *Although there are no hard and fast rules in making awards on property adjustment, the Court is guided by the principle of doing justice taking into account the circumstances of a given case.*

The petitioner filed an affidavit in reply which she deposed dated 23rd June, 2022. The gist is that she contributed financially and in kind to the acquisition and development of the family's real properties and other assets during the 28 years of her marriage to the respondent. That she made considerable contributions to the welfare and up keep of the family by providing for various family needs thus relieving the respondent of some domestic and financial burdens. She deposed that during the subsistence of the marriage, she raised funds for the projects by, *inter alia*, getting various loans, commuting leave

days for cash of which she referred to exhibits PMM1, PMM2 and PMM7 in her affidavit in support.

She averred that during the subsistence of the marriage, the respondent was not in gainful employment for the following periods of time: January 1997 to 2000 of which during this period, the respondent was running a family business financed by the petitioner and her brother Stanislaus Mwape and most of the proceeds from the business were used to purchase Lot 10198/M Lusaka (or Lusaka West farm which is jointly owned by the parties at a cost of K3,500,000.00 (unrebased). That in order to finance the respondent's business, the petitioner obtained a household loan of K2,000,000.00 (unrebased) from her employer which was partly used to finance the family business of which she referred to exhibit PMM1 her payslip for January, 1997 showing deductions for the said loan.

She averred that during the period September, 2007 to around May, 2008 the respondent was not in gainful employment such that the respondent, herself and their three children stayed at her young sister Winniefrida Mwape's then residence in Northmead, Lusaka as at the time, the petitioner was financing the building of the farm house at Lot 10198/M Lusaka. Meanwhile, the matrimonial property in Helen Kaunda was put on rent to help the family raise some income.

The petitioner also referred to the period between January 2013 to August, 2016 and deposed that during the said period, the respondent was not in gainful employment and she referred to exhibit PMM2 the respondent's payslip from Zambia Co-operative Federation Limited showing the 1st September, 2016 as the date he was employed. She averred that during this period, she single headedly paid for household expenses including university and school fees for the three children of the family namely Kudakwashe, Tashaya Muranganwa and Kapambwe. That on his part, the respondent paid less than 5 percent of the school fees for the last-born child Kapambwe from mid-2008 to December,

2012 and referred to exhibit PMM3 the fee outline and a bank transfer from her account to Kalulushi University for Kapambwe's fees; as well as various receipts for payment of fees for Kapambwe Munyoro and Tashaya Muranganwa Munyoro.

The petitioner deposed that during the construction of house No. 294/8137 off Alick Nkhata Road, Lusaka (the matrimonial house) around 1995 to 2002, she was responsible for payment of rentals at the properties the family rented as per her affidavit in support. That she paid for some construction works at the matrimonial house in 2002 as the property was in semi-finished state when the family moved in sometime in 2002. She alluded to the works as being that she financed the rebuilding of the wall fence, drive in, renovations of the kitchen, worked on the plumbing works among other things. That meanwhile, the said property is in the respondent's name and she referred to the Certificate of Title marked PMM4. That the respondent also used to siphon family money to a parallel family he had concealed for 10 years from which he had three children and she referred to exhibit PMM5, copies of bank deposit slips for the years 2012 to 2013.

That contrary to the respondent's affidavit in opposition, Kudakwashe Munyoro does not reside with the respondent at the matrimonial home as he has been living with the petitioner's young brother Stanislaus Mwape in Chingola on the Copperbelt for the past 11 months. She deposed that contrary to the respondent's averment in the affidavit in opposition, Farm SER/11098 is not his personal and private project as she contributed financially and in kind to the acquisition and development of the said farm. That the said farm has since been subdivided into two, namely, farm No LN 78872/1 Serenje registered in the petitioner's name and farm No. LN - 78872/2 Serenje registered in the respondent's name of which she referred to a copy of the Certificate of Title for her farm No LN 78872/1 marked PMM6. She averred that as admitted by the respondent, the petitioner paid for the surveying/subdivision of the Serenje farm.

She deposed that during the period 2006 to 2007 when she was in Germany for studies, her acting allowances at work were, on her instruction, paid directly to the respondent as her contribution to the financing of family projects at the time (including the acquisition of the then Farm SER/11098. She referred to exhibit PMM7 being copies of documents evidencing her entitlement to the acting allowance and the calculations thereof. The petitioner disputed the respondent's assertion that in 2017, he sold the small slab at Kasanda Market in Kabwe to offset workers' salaries at the Serenje farm as there is no way the respondent could have sold a property jointly owned with her.

The petitioner deposed that she used to give money to the respondent especially during the periods he was not in gainful employment to buy construction materials such as for Lot 10198/M Lusaka including installation of electricity, purchase of roofing sheets for the big barn, purchase of timber for roofing the main house at the cost of K36,000.00 and for drilling of a second borehole. She referred to a copy of the bank transfer for the amount of K4,750,000.00 (unrebased) from the petitioner to the respondent's bank account made on 25th September, 2007 for purchase of building materials for the farm house at Lot 10198/M Lusaka as per exhibit PMM8.

That on 8th November, 2015 she gave the respondent the sum of K19,000.00 (rebased) to pay for roofing tiles whilst she remained in the vehicle but the respondent caused the receipt to be issued in his name as per exhibit PMM9. That she purchased a number of moveable assets including a Mitsubishi canter registration number BAD 6741 and a Massey Ferguson Tractor registration number ALJ 7586, both registered in her name and she referred to exhibit PMM10 a copy of the bank transfer for K30,000,000.00 (Thirty million Kwacha) (unrebased) from her to the supplier at the Massey Ferguson Tractor. She also referred to copies of the white books for the Mitsubishi Canter and the Tractor in her name collectively marked as exhibit PMM11.

She deposed that Lot 31182/M star cottage Lusaka which was initially registered in her name was in the year 2020, with the respondent's knowledge gifted to the family's second born child Tashaya Muranganwa Munyoro. In that regard, she referred to the Certificate of Title in the name of Tashaya Muranganwa Munyoro exhibit PMM12. She also referred to a copy of the Deed of Gift which she executed being exhibit PMM13. She deposed that the respondent and her agreed to gift the two Star Cottage properties namely Lot 31182/M Lusaka registered in her name then and Lot 31181/M Lusaka registered in the respondent's name, each to the two sons of the family being Tashaya Muranganwa Munyoro and Kudakwashe Munyoro respectively.

That the respondent later, refused to gift Lot 31181/M Lusaka to Kudakwashe Munyoro as earlier agreed. The petitioner referred to a copy of the Deed of Gift which the respondent refused to execute in favour of Kudakwashe Munyoro exhibit PMMM14 and a copy of the Certificate of Title for Lot No 31181 Lusaka registered in the respondent's name exhibit PMM15. The petitioner deposed that Lot 31182/M Lusaka is available for property settlement/adjustment contrary to the respondent's assertion.

Further, the petitioner deposed that as a qualifying civil servant, in 2016 she was offered a mortgage loan of K601,562.14 by the Public Service Fund Board (PSPFB) as per exhibit PMM16 dated 3rd November, 2016 which she used to acquire Subdivision 149 of subdivision No. 6 of Subnivium B of Farm No. 378a Chelston Green, Salama Park Lusaka acquired in 2016 offered to her by the vendor one Sali Mwanza at a consideration of K800,000.00(rebased). She referred to a copy of the offer letter dated 10th October, 2016 from the said vendor exhibit PMM17. That there was a shortfall on the purchase price of K245,000.00 such that she had to borrow the sum of K138,000.00 from her young sister Winniefrida Mwape repayable on receiving her pension.

She referred to exhibit PMM18 a bank slip evidencing the transfer of the sum of K138,000.00 by her sister to the said vendors bank account; and a copy of her

hand written letter sent to the PSPFB in which she undertook to raise the shortfall of K245,000.00 as per exhibit PMM19. She also referred to a copy of the Mortgage Deed which she executed being exhibit PMM20. Further, the petitioner referred to a copy of the PSPFB loan repayment schedule which she obtained on 15th February, 2022 showing the outstanding balance of K482,300.54 then on the mortgage loan as per exhibit PMM21. The petitioner made reference to a copy of a payslip for April, 2022 showing deductions for the mortgage loan exhibit PMM22. She deposed that as at February, 2022, the total liability for Salama Park property was K620,300.54 comprising of the following: (a) Outstanding amount on the mortgage as at February, 2022- K482,300.54; and (b) Amount borrowed to meet the shortfall of the purchase price and costs K138,000.00 bringing the total to K620,300.54.

The petitioner denied owning a property in Kitwe on the Copperbelt as alleged by the respondent and that neither did she build on the alleged property. She also denied removing or taking 95 percent of kitchenware when she left the matrimonial home in early 2021 as alleged by the respondent but that she only took about half of the kitchenware for her use. She also denied having fixed/savings deposits apart from what is owed by Madison Asset Management Company Zambia limited (MAMCO). She deposed that she holds 149 shares in Airtel Networks Zambia PLC on behalf of her three children and she referred to a copy of the Dividend Advice Note from Corpserve Transfer Agents Limited "PMM23". She added that she had not yet been paid her pension.

She deposed that the only Certificates of Title in her possession are for Lot 31181/M Lusaka the property the respondent had intended to gift to Kundakwashe Munyoro as explained above and for Farm LN-8872/1 Serenje registered in her name. Also, that the only receipts and documents in her possession are for various materials and expenses she paid for. She added that when leaving the matrimonial home, she took with her two framed wall pictures in which she featured prominently while the third framed picture was

gotten from the respondent, in the presence of other people including police officers from the victim support unit. She deposed that the two family properties purportedly sold by the respondent at Kasanda market was done without her knowledge and consent and the respondent did not render an account to her as a joint owner of the proceeds of the alleged sale. She deposed that the respondent should render an account of the proceeds of the alleged sale of the jointly owned properties.

The petitioner deposed that the ground rent bill for the residential plot SER/1720 from the Ministry of Lands still bears the respondent's name as per exhibit PMM24 the ground rent bill and the statement. It was deposed that the household utensils she got when moving out of the matrimonial home were needed for her use and that she took away the Massey Ferguson Tractor registered in her name from Lot 10198/M Lusaka in December, 2020.

She deposed that the said tractor was not being serviced and repaired by the respondent, and as a result, it was in a bad state of repair. That for instance, the starter motor was defective as it had fuel and oil leaks while the body parts were held in place by wires as per exhibit PMM25, photographs for some parts of the tractor in disrepair. She averred that she also moved out of the matrimonial home with the Mitsubishi Canter which is registered in her name as this is the only vehicle she has. She added that the said vehicle is occasionally used by their first-born son Kudakwashe for his errands in Chingola on the Copperbelt.

Regarding the Agribusiness Loan, she deposed that the respondent was well aware about the acquisition of the Agribusiness loan in the sum of K350,000.00 from the Government of the Republic of Zambia acting through the Ministry of Finance as per exhibit PMM26. She deposed that the Agribusiness loan was initially intended to finance fish ponds at the jointly owned Lot 10198/M Lusaka but after discovering that the respondent had sired three children out of wedlock, she was compelled to invest K260,000.00 in

MAMCO with the respondent's knowledge while the rest of the monies were spent on repairs of the Mitsubishi Canter registration number BAD 6741 and other miscellaneous expenses. She referred to exhibit PMM27, the Agribusiness loan payment calculator and amortization schedule.

She deposed that the MAMCO investment fund has been mismanaged and is on the verge of being declared insolvent. As a result, the Securities and Exchange Commission has taken possession of the fund to protect investors and depositors as per the letter dated 10th September, 2020 from MAMCO showing the sum of K251,318.30 still owed or outstanding to her as per exhibit PMM28. That the amount owed under the Agribusiness loan stood at K450,275.00 as at May, 2022 which would eventually be deducted from her pension.

The petitioner averred that Lot 10198/M Lusaka is jointly owned by her and the respondent and she referred to exhibit PMM29, a copy of the Certificate of Title; and a copy of the contract of sale dated 22nd October, 1999 for the purchase of Lot 10198/M Lusaka at a consideration of K3,500,000.00 (unrebased) as per exhibit PMM30. That at the time the parties herein purchased Lot 10198/M Lusaka, the respondent was unemployed. She averred that the respondent cannot therefore claim to have single handedly acquired the Lusaka West farm as he had no financial capacity to do so. Meanwhile, she made various contributions for the purchase and development of the jointly owned Lot 10198/M Lusaka as per the contents of the affidavits.

She deposed that receipts number 191,169 and 183 marked PMM1 in her affidavit in support, are for window frames that were bought when the manager's house at Lot 10198/M was under construction. She deposed that the respondent is aware that the receipts bear the name of her cousin Mathews Mofya Mwape (and not her brother Stanislaus Mwape) who from time to time, from 2004 to 2012 supervised the works at the Lusaka West farm and bought building materials, burglar bars, doors on her behalf from her personal money.

The petitioner deposed that she contributed to the installation of the three-phase power at the jointly owned Lot 10198/M Lusaka including the K15,000.00 cash given to the respondent to pay for meter box, cables among others. She stated that the respondent's gratuity from Food Reserve Agency was utilised to settle the loan the respondent had obtained when he separated from the Food Reserve Agency as PER exhibit PMM32 a copy of the respondent's payslip showing indebtedness to the Food Reserve Agency. That on her part, she paid the sum of K8,400,000.00(unrebased) to Viking Investments Group Limited for purchase of 3000, 6-inch blocks for the construction of the farm house at Lot 10198/M Lusaka as per exhibit PMM33, a copy of the receipt from Viking Investment Group.

She also referred to exhibits collectively marked as PMM34 being receipts for building materials for the manager's house at Lot 10198/M Lusaka including K9,900,000.00 (unrebased) for the purchase of 3,500 four inch blocks, receipts for K1,600,000.00 (unrebased) and K1,900,000.00 (unrebased) for purchase of building sand. She also referred to exhibits collectively marked as PMM35 being various receipts for expenses for various items at the Lusaka West farm.

The petitioner averred that the receipts marked PMM3 in her affidavit in support are for the works done at the matrimonial home, where she, *inter alia*, paid for installation of the electric fence, renovations of the kitchen, wall fence, paving the drive way and other works incidental thereto. She stated that the respondent stopped contributing to household expenses in 2008 up to about mid-2017. Thereafter there were erratic contributions from the respondent. She averred that the Lusaka West farm operating expenses were largely paid by the petitioner as per exhibit PMM36 being some of the receipts for expenses that she paid for.

Regarding the construction of the Chipata property, the petitioner denied stopping the respondent from developing it and denied being a hindrance to the acquisition of the said property. The petitioner reiterated the various

contributions both financial and in kind that she made during the subsistence of the marriage. She deposed that the house off Chingola/Solwezi Road in Chingola, on the Copperbelt Province owned by the respondent which the respondent had disclosed should also be subject to property settlement/adjustment. That also, the respondent's pension contributions with National Pension Scheme Authority should also be subject to sharing and/or adjustment and she referred to various copies of the respondent's payslips evidencing pension contributions as per exhibit PMM37.

On her part, she deposed that she had not been paid her pension and that there are no fixed/savings save for what is owed by MAMCO. Regarding the Salama Park property, she deposed that the respondent did not contribute either financially or in kind towards the purchase of the Salama property where she resides nor did he pay for any mortgage instalment and therefore cannot claim to be awarded this property.

She deposed that Lot 10198/M Lusaka jointly owned by the parties herein should be sold after a valuation and the proceeds shared accordingly. On the number of cattle for the family, she deposed that the same were 45 as at September, 2020 at Serenje and Lusaka West farm and not 11 as alluded to by the respondent. That the respondent has been solely managing and benefitting from the Lusaka West farm and the two Serenje farms from the time the petitioner left the matrimonial home. That further, the respondent has been solely benefitting from rentals for the three flats in Chipata, three flats and one house in Kabwe.

She deposed that she recently retired while the respondent is still in active service with Zambia Cooperative Federation. That meanwhile, her source of income is one rented flat on Salama Park property while she resides in the other flat. She alluded to the debts acquired highlighted in her affidavits which would be deducted from her meagre pension.

She proposed that the various family properties or assets be awarded and distributed as follows:

For the Petitioner

- Farm Plot No LN 78872/1 of 258 hectares
- 24 cattle
- 15 goats
- 12,652 hass avocado plants/trees
- A residential plot on stand 31181/M SD 1463-Star Cottage Lusaka in high-cost area.
- Two bedroomed semi-detached flats acquired as a mortgage deed.
- The outstanding mortgage payments at February, 2022 was K620,300.54 and K450,275 for the Agribusiness loan.
- 90,000 shares in CEEC.
- Mitsubishi canter, registration BAD 6741
- Massey Ferguson tractor registration ALJ 7586
- Off cut chassis for the Mitsubishi Canter
- A man truck registration number ABU 2992ZM
- Incubator
- Household fittings, bath tub and toilet and other toilets and bathtubs
- Roofing materials and 5x25kg bags of soya seeds

The petitioner indicated that the items marked by a tick were with her:

- 1 brown 3-piece sofa set ✓
- 01 white double wardrobe
- 01 Small black bedside table ✓
- 01 medium sized bed ✓
- 01 large and 1 medium deep freezer and
01 big upright fridge (with petitioner)

- 01 four plate cooker with stove and 2 plate gas stove ✓
- 01 large flower pot
- 05 medium flower pots
- 01 tube TV and decoder
- 01 music machine
- 01 washing machine ✓
- 01 brown carpet ✓
- 01 black coffee table and 1 beige coffee table ✓
- 01 dining table and chairs
- Kitchenware, old gate and tractor trailer ✓

For the Respondent

- Farm Plot No LN 78872/2 of 261 hectares
- 24 cattle
- 17 goats
- 12,652 has avocado plants/trees
- A residential Plot SER/1720 Serenje
- A residential Plot in Mobile high-cost area stand No. 8797 Kabwe with 2x2 bedroomed flats and one bedroomed flat in a wall fence
- 96,983 shares rebased to 97 in REES company
- Gratuity for 2019 and 2020 of K85,000.00
- A Scania rigid truck registration ABV 2815ZM
- Darf truck with differential and assorted spares
- Mitsubishi colt registration ACT 5903
- A welding machine
- Disc harrow
- Freezit making machine
- A one roomed shop number 56 in the suburb Helen Kaunda
- 5x25kg bags of soya seeds
- 01 mukwa door and 1 flash door

- 01 black 3-piece sofa set
- 01 brown 3-piece sofa set
- 01 brown room divider
- 01 maroon room divider
- 01 big black pedestal upright fan
- 01 orthopaedic queen-sized bed
- 01 double bed
- 01 medium sized bed
- 01 upright deep freezer
- 01 medium sized deep freezer and 1 small fridge
- 01 four plate cooker
- 01 water grill
- 01 sandwich maker
- 01 black storage trolley with four drawers
- 03 large 70 cm x 40 cm decorative mirrors
- 01 book shelf
- 01 plasma TV with decoder and dish
- 01 music machine
- 01 canon cam coder
- 02 office chest of drawers
- 01 welding machine
- 01 sanding machine
- 01 grinder machine
- 01 Genset
- 01 Rifle
- Gym training bench
- 01 maroon and beige carpet
- 01 dark brown and beige carpet
- 01 large brown table with matching smaller 4 tables
- 01 small brown coffee table
- 01 upright small square laundry table

- 07 metres by 60 cm white presentation board
- 02 small bed side tables
- 01 brown dining table and 5 chairs
- Kitchenware, sandwich maker and electric blender
- Farm implements and sprayers, drip irrigation pipes and hose pipes
- Household fittings such as switches, toilet pans, door handles, grill door, tool boxes, and all sundry
- All curtains and lace nets in the matrimonial house
- Granite stone for the kitchen counter.

The petitioner caused to be filed submissions in reply dated 13th October, 2022. On the matrimonial house at Plot 294/8137 off Alick Nkhata Road, Lusaka it was submitted that it belongs to both parties in equal shares as there is uncontroverted evidence that the petitioner contributed to the construction, renovations, maintenance expenses as well as paid rentals while the said house was under construction. It was contended that if this court was inclined to order the respondent to buy off the petitioner's 50 percent of the property, the said money should be paid within fourteen days of the date of issuance of the Valuation Report. And regarding the mortgaged subdivision 149 of Subdivision 6 of Subdivision B of Farm No. 378, Chelstone Green, Salama Park, it was submitted that the respondent has no beneficial interest in it. It was submitted that the petitioner is servicing the mortgage and that there is no contribution whatsoever made by the respondent. On this argument, reliance was placed, *inter alia*, on the case of **Matthews Chishimba Nkhata v Easter Dolly Mwenda Nkhata**¹ and the **Fribance**⁷ case.

On the treatment of Lot 31182/M Star Cottage, Lusaka, it was submitted that the said property is not amenable to property adjustment while Lot 31181/M Star Cottage is subject to property settlement as the same was not gifted to the son of the family by the respondent. And regarding plot 2492 Mulubila Kabwe, it was submitted that in the respondent's affidavit in opposition dated 10th

February, 2022, he conceded that the said property is subject to property settlement. That there is undisputed evidence that the petitioner contributed to this property both materially and in kind and in this regard, reliance was placed on, *inter alia*, the case of **Matthews Chishimba Nkhata v. Esther Dolly Mwenda Nkhata**¹; and **Fabion Ponde v. Charity Bwalya**³ in which it was stated that:

“we underscored the point that it does not matter that financial contribution was not made by both spouses to the acquisition or development of family assets; what matters is that the parties to the marriage make contributions either materially or in kind towards those assets....

It should follow that in a property adjustment application, a spouse making the application should demonstrate his or her own contribution to the matrimonial property either materially, financially or in kind. This, the applying spouse can do by showing how he or she contributed in concrete terms to the acquisition or development of the property by, for example, giving the necessary moral and financial support to the respondent; buying building materials needed by workmen at the site; supervising workmen while the spouse was away raising resources, or that he or she paid school fees, medical bills, and met other expenses which should have been borne wholly or in part by the respondent and thereby helped the respondent channel resources to the property.” (Emphasis theirs)

It was submitted that the said property be awarded to the petitioner and in the alternative, it should be sold whose proceeds should be shared equally between the parties.

Coming to the residential flats located off Great East Road, Chipata on plot number 5472, it was submitted that the respondent indicated that the said property is subject to property settlement. That also, the respondent proposed

that this property be allocated to the petitioner and therefore, cannot later submit that the petitioner has no interest in the said property. Again, reliance was placed on the case of **Matthews Chishimba v. Esther Dolly Mwenda Nkhata**¹.

Regarding property on plot number 2 Main Road Kasanda Township, Kabwe and small slab at Kasanda Market, Kabwe sold during the subsistence of the marriage without the knowledge of the petitioner, it was submitted that the petitioner should receive her consideration from the proceeds of the sale.

With regard to stand 8787 Mobile Unit, Kabwe it was submitted that the property be sold and proceeds shared equally between them. Regarding shares held by the respondent in Rural Economic Services Limited (REES) and shares held by the petitioner in the Copperbelt Energy Corporation, it was submitted that the proposal for the petitioner to account is not tenable. In the alternative, it was submitted that the respondent also be made to account for the dividends paid to him during the subsistence of the marriage. That also, regarding the fixed deposits and savings held by the petitioner, it was submitted that the Madison Asset Management Company was on the verge of being declared insolvent and was placed under the possession of the Securities and Exchange Commission being the regulator. That in view of the foregoing, rendering an account would be an academic exercise.

Related to this issue is the treatment of the petitioner and respondent's unpaid pensions and respondent's gratuities of which I was referred to the case of **Connie Munalula v. Donald Mwaba**⁹ in which it was stated at page J29 to J30 that:

As to whether the appellant was entitled to 50% of the pension, we pointed out in Matthews Chishimba Nkhata v. Esther Dolly Mwenda Nkhata that:

"Equally rights between husbands and wives do not necessarily translate, in every case, into equal portions of family property. Each case should be

determined in terms of how much each party contributed and an appropriate percentage of matrimonial property apportioned on that basis. It should follow that in a property adjustment application, a spouse making the application should demonstrate his/her own contribution to the matrimonial property either materially, financially or in kind."

It was submitted in cross examination that the respondent confirmed to the court that the outstanding monies from the petitioner's mortgage and Agribusiness loan obtained by the petitioner are to be deducted from the petitioner's pension. Equally, from the undisputed evidence on record, the sum of K138,000.00 borrowed by the petitioner from her now deceased sister to meet the shortfall on the purchase price of the Salama Park property has to be repaid from the pension money.

Regarding liabilities on the mortgaged subdivision 149 of subdivision 6 of Farm No. 387A and the Agribusiness loan, it was submitted that the same were obtained for the petitioner's personal needs and therefore, the respondent cannot be compelled to settle liabilities that were not for the family business.

Coming to the motor vehicles acquired during the subsistence of the marriage, it was submitted that the petitioner be awarded the Man Truck ABU 2992ZM (apart from the Mitsubishi Canter BAD 6741 and Massey Ferguson Tractor AIJ 7586 where there is agreement from the parties' submission) so as to attain equity in the distribution or sharing of family vehicles.

In closing, this court was called upon to take into account both financial contributions and contributions in kind made by the petitioner towards the acquisition and development of the various family assets driven by the need to do justice under the circumstances.

At the hearing, the petitioner testified as PW1. She testified that she filed the affidavit in support and in reply which she was relying on as part of her evidence. Much of the contents of her testimony is already reproduced herein,

therefore, there is no need for repetition save for issues that require emphasis. PW1 stated that she was married to the respondent for 28 years and that during the subsistence of the marriage, she made financial, material and in kind contributions to the acquisition and development of real property and other assets of the family. She stated that she obtained various loans, commuted leave days for cash and had some allowances which she channelled towards the development of the family and that she had produced exhibits in her affidavits in that regard. She alluded to having paid rentals for the Helen Kaunda house for the period 1995 to 2002 when the respondent was not in gainful employment.

She also alluded to the fact that the Lusaka West farm is jointly owned and the Certificate of Title has both names. She testified that the Star Cottage plot has two flats individually owned and it was agreed that the petitioner gifts to one of the sons while the respondent gifts to another son, being the first and second born sons. She stated that she gifted hers to the second born son Tashaya Munyoro while the respondent was supposed to gift his to the first born son as evidenced by documentation in that regard but the respondent changed his mind and refused to gift it to the first born son. She testified that the one she gifted to Tashaya Murangano Munyoro is already in his name having been changed from her name. That meanwhile, the other cottage in the respondent's name is part of property settlement.

She told this court that when she left the matrimonial home in February, 2021 she went away with Mitsubishi Canter which she purchased in readiness for her retirement and a few household utensils. She denied owning a plot in Kitwe on the Copperbelt. She testified that the respondent is still in employment with the Zambia Cooperative Federation (ZCF) and is also receiving rentals from the three flats in Chingola and three flats and a house in Kabwe plus the two farms which he is solely managing. That on her part, she resides in a flat in Salama Park while the other flat at the same plot is on rent which is her only source of income.

She testified that the said Salama Park property was obtained on a mortgage against her pension from Public Service Pension Fund Board and that there are still outstanding payments as highlighted in the affidavit in reply. She testified that she has been paying K9,400.00 monthly deductions since April, 2017 towards the mortgage. She stated that she is still paying meaning that there would be money deducted from her pension. She testified that as at February, 2022 the outstanding amount on the mortgage was K482,300.54 which would be deducted from her pension. She added that she also obtained an Agribusiness loan amounting to K350,000.00 which is standing at K450,275.00 and the Family Loan is at K138,000.00 which would also be deducted from her pension.

She stated that the respondent alluded to 11 cattle when in fact the cattle is 45, while the goats were 32 as at September, 2020. She told this court that she was shocked to learn that the respondent sold some property in Kabwe, that is, plot 2 Kasanda Market and a slab for the market plot meanwhile, she contributed to the acquisition of the said properties. She added that however, she has not benefited from the sale of the said properties. She stated that they have agreed on the sharing of the Serenje farms that each gets the one in their names respectively while everything else is in dispute. She testified that the respondent also wants a share of her pension while the respondent has NAPSA deductions.

She informed this court that the respondent also has a two bedroomed house along Chingola-Solwezi road.

In cross examination, the witness was referred to exhibit PMM21 from the affidavit in reply and she stated that the mortgage amount was K601,562.14. That in 2017 from January to December, she made payments towards the mortgage totalling K94,238.82. She testified that exhibit PMM21 has K564,543.82 as the total deductions added together which she stated was in respect of the mortgage repayments for the sum of K601,562.14. She stated

that the sum of K564,543.82 was towards the principal amount without considering the interest.

On the Agribusiness Loan, the petitioner denied having spent it on personal items as it was obtained for the family to be invested at the farm. Later, she stated that however, the money was not spent at the farm. She denied the respondent buying her a motor vehicle when he was in business.

The witness stated that her pension was not subject of property settlement. She reiterated that if the respondent's gratuity was not subject of property settlement, it meant that her pension was also not subject of property settlement.

In re-examination, the witness was referred to exhibit PMM21 in the affidavit in reply and stated that as at 15th February, 2022 the outstanding balance was K482,300.54. She testified that the principal amount has not been paid in full and interest is yet to be paid. Regarding the Agribusiness Loan, she stated that the same was a family investment.

This marked the close of the petitioner's case.

On his part, the respondent filed an affidavit in opposition which he deposed dated 10th February, 2022. It was deposed that during the subsistence of the marriage between him and the petitioner, the respondent invested all his money and savings in real property and acquired various moveable assets such as trucks for the family. That the petitioner invested most of her money in savings, fixed deposits and shares amongst other things.

The respondent deposed that the immovable property subject to property settlement were as follows:

- Farm No. L/10198/M Lusaka West.
- The matrimonial house plot 294/8137 off Alick Nkata Road, Helen Kaunda where the respondent currently resides with his two sons

Kudakwasha Munyoro (first born) and Tashaya Muranganwa Munyoro second born.

- Farm SER/11098 of over 500 hectares obtained by the respondent while working in Serenje district. In order to facilitate acquisition of title to the land, the respondent had to split the farm in two portions, being Serenje LN 78872/2 and the other title is Serenje LN-78871/1 which is in the petitioner's name. That the respondent cleared 12 hectares of land, which cuts across both pieces of land and planted three hectares of avocado trees but only about 104 trees survived which is about a lima, a small woodlot of pine trees (less than a lima) and that the respondent currently has 11 heads of cattle. That the developments thereon are the respondent's personal and private project. That the petitioner has not been to this farm for over four years.
- Regarding the Star Cottage plots, it was deposed that the respondent and the petitioner have two residential plots in this area namely stand 31181/M and 31182/M which are on separate title, of which one is in the respondent's name while the other in the petitioner's name and noted that the one in the petitioner's name had not been included in the petitioner's proposals on property settlement.
- Salama Park flats No. SD No. 149 of SD No. 6 of SDB of Farm No. 378 which were secured by the petitioner's pension. He deposed that it is a misrepresentation of the facts when the petitioner alleged that there is a liability on the flats.
- Self- built one roomed shop No. 56 in Helen Kaunda.
- Plot 2492 Mulubila Kabwe a medium cost house in medium cost area.
- Mobile unit stand No. 8797, Kabwe.
- Plot number 5472 former Namboard area.
- That the respondent has 97 shares in Rural Economic Expansion Services (REES) incorrectly indicated by the petitioner as 96,983. That the background to the shares was due to PACRA's request that all company shares be rebased. The respondent referred me to exhibits

collectively marked MGM1 being copies of shareholder confirmation from REES and REES Certificate of Share Capital from PACRA.

- Respondents' gratuity for the year 2019 and 2020.
- Petitioner's pension.
- Petitioners' shares in CEC 90,0000 and other companies.
- Petitioners' savings and fixed deposits.

Regarding the movable and other assets subject to property settlement, the respondent deposed that they are as follows:

- Man Truck registration No. ABU2992 ZM
- Scania registration ABV 2815
- Leyland Daf ABL 1055
- Mitsubishi Colt Double ACT 5903
- Massy Ferguson tractor registration No. ALJ 7586
- Mitsubishi Canter, registration No. BAD 6741
- 01 Disc Harrow
- 01 Egg Incubator
- 01 welding machine
- 11 Cattle (four at farm No. L/10198/M Lusaka West and 7 at Serenje LN-78872/2 Serenje)
- 4000 avocado seedling plants
- Household fittings (bathtub and toilets)
- Roofing sheets
- 01 brown 3-piece sofa set (removed from the matrimonial home)
- 01 white double wardrobe
- 01 medium sized bed (removed from matrimonial home)
- 01 large deep freezer (removed from matrimonial home)
- 01 medium deep freezer
- 01 big upright fridge
- 01 four plate stove (removed from matrimonial home)

- 01 four plate stove
- 01 two plate gas stove and 9 kg cylinder (removed from matrimonial home)
- 01 large pot, 05 medium flower pots
- 01 Tube TV and decoder
- 01 Plasma TV and decoder
- 01 music machine
- 01 washing machine (removed from matrimonial home)
- 01 brown carpet (removed from matrimonial home)
- 01 black coffee table (taken by the petitioner)
- 01 bed side table (taken by the petitioner)
- 01 beige side coffee table
- 01 mukwa dining table with 2 chairs
- 01 kitchen counter granite top
- 01 mukwa door
- 01 flash wooden door
- 01 black 3-piece sofa set
- 01 brown 3-piece sofa seat
- 01 brown room divider
- 01 maroon room divider
- 01 big black pedestal upright fan
- 01 orthopaedic queen size bed
- 01 double bed
- 01 medium sized bed
- 01 upright deep freezer
- 01 small fridge
- 01 water grill
- 03 large mirrors (01 broken)
- Assortment of curtain and curtain nets
- 01 Bookshelf
- 02 small office cabinets

- 01 bedside drawer (removed from matrimonial home)
- Farm implements (hoes etc, 01 sprayer, drip irrigation pipes and hose pipe)
- 01 large brown coffee table with 2 smaller side tables
- 01 upright small laundry table
- 01 brown dining table and 5 chairs
- kitchen ware (95 percent taken by the petitioner)
- Family wall pictures (all taken by the petitioner)

It was deposed that the petitioner omitted to include property acquired during the subsistence of the marriage which is subject of property settlement which property is as follows:

- Plot Number 31182/M in the petitioner's name at Star Cottage, Lusaka.
- Property built by the petitioner on the Copperbelt, Kitwe
- Petitioner's pension
- Petitioners fixed deposit instruments and bank savings
- 95 percent of kitchenware removed from the matrimonial house by the petitioner and her sister
- Family wall pictures and other documents pertaining to some properties including receipts which were removed by the petitioner.

The respondent averred that some properties were not subject of property settlement and that these are as follows:

- Residential Plot No. 2 main road, Kasanda Township was sold more than 10 years ago and that the petitioner was aware.
- Small slab in Kasanda market in Kabwe which was sold in 2017 to offset workers' salaries in Serenje and Lusaka and that the petitioner was aware.
- Freezit making machine was acquired under a company with the respondent's friend who paid for it and that the petitioner was aware.

- Leyland 130 spare differential and assorted spares are not family property as the same are owned by Mr. Garnet Mulomo based in the United Kingdom. The Respondent was merely requested to sell the same on behalf of Mr. Garnet Mulomo of which the petitioner was aware.
- A Residential Plot SER/1720 Serenje was offered to the respondent whilst he was working in Serenje and he left it undeveloped for three years as he was working in Chipata. That Serenje Council repossessed the plot for reason of non-development and offered it to another person who had since built a house on it of which this could be verified with Serenje Council.

It was deposed that the petitioner and her brother caused to be removed from Farm L/10198, Lusaka West the Massy Ferguson Tractor Registration number ALJ 7586 and Mitsubishi Canter registration number BAD 67 41 and took them to Chingola and that the same are being used by the petitioner's brother Stansious Mwape for his maize purchasing business in Mpongwe District. Regarding the mortgage for the Salama Park flats pegged by the petitioner at K639,200.00 as at June 2021, it was deposed that the liabilities referred to were incorrect as the same was fully paid by the Pensions Board against the petitioner's pension. It was averred that the deductions were being made by the Pensions board and any outstanding amount would be secured by the petitioner's pension. The respondent refuted the existence of an agribusiness loan obtained by the petitioner as the same was not to his knowledge. That the respondent only came to be aware of the said loan when the petitioner requested for help to retrieve the money from Madison Finance a few months before the petitioner filed the divorce petition.

Regarding the properties proposed by the petitioner that they be sold, the respondent opposed it on the basis that the said properties were acquired for purposes that they be an inheritances for the children of the family namely: Kudakwashe Munyoro, Tashaya Munyoro, Kapambwe Munyoro, Kudzanayi Munyoro, Tinashe Munyoro and Itayi Nyasha Munyoro. He averred that the

proposal by the petitioner to sell the properties in question is very unreasonable, malicious and is bent only on destroying everything the respondent has built in his lifetime as an inheritance for the children and other family dependants.

The respondent also opposed the petitioner's proposal that Farm No. L/10198/M Lusaka West be sold and proceeds shared 60 percent for the petitioner and 40 percent for the respondent. That the respondent also opposed the petitioner's assertion that the petitioner's brother contributed towards acquisition of farm No L/10198/M Lusaka West and that the assertion that the petitioner contributed greatly towards construction of the main house, the barn and installation of power and that the receipts indicating the petitioner's brother were in no way related to the farm in question. He deposed that he solely acquired the farm in question located in Lusaka West and that it is incorrect that his contribution was 20 percent while the petitioner's was 80 percent towards construction of the main house. He averred that the petitioner's contribution towards the construction of the main house was 35 percent in addition to constructing the manager's house and caused a borehole to be drilled.

He deposed that it was him who paid for the three-phase power connection to the Lusaka West farm from the gratuity he received from the Food Reserve Agency where he was working at the time. Regarding the matrimonial house in Helen Kaunda, he deposed that they both contributed to its construction in that the respondent developed the house while the petitioner maintained it and met the cost of repainting the house. Regarding the Star Cottage plots in Lusaka West which the petitioner deposed were a replacement of the Mass Media plot and put in the respondent's name, the respondent deposed that the assertion is incorrect as the petitioner and respondent each acquired a plot in their respective names; Stand 31181/M SD 1463 Lusaka West is for the respondent while stand 31182/M SD 1463 Lusaka West is for the petitioner.

The respondent averred that the Kabwe property in Kasanda market is non-existent as it was disposed off more than seven years ago and that the petitioner was aware. He deposed that the petitioner was not entitled to a share in the Chipata property as she had prevented the respondent from developing it nor contributed to the development of the property. For the Mulubila property in Kabwe, it was deposed that the petitioner only contributed a few boxes of tiles to cover the laundry room and the same could not be shared equally.

The respondent proposed that the property be distributed to him and the petitioner in the following manner:

For the Respondent

- Salama Park SD No. 149 of SD No. 6 of SDB of farm No. 378 Lusaka, with purported outstanding mortgage.
- Respondents Gratuity 50 percent
- Petitioners pension 50 percent
- 45,000 CEC Shares
- 49 REES Shares
- Petitioners fixed deposits, savings, undisclosed shares 50 percent
- Farm plot LN 78872/2 Serenje
- Farm property number L/10198/M Lusaka West
- Residential house, medium cost stand number 2492 Mulubila
- Mobile unit, Stand No. 8797 Kabwe
- One roomed shop number 56 Helen Kaunda
- Mitsubishi Canter Registration No. BAD 6741
- Scania Registration No. ABV 2815 ZM
- Man Truck Registration No. ABU 2992 ZM
- Welding machine
- 11 Cattle
- 4000 Avocado seedlings

- 01 white double wardrobe
- 01 medium deep freezer
- 01 big upright fridge
- 01x4 plate stove
- 01 Plasma TV, decoder and dish
- 01 music machine
- 01 big black pedestal upright fan
- 01 upright deep freezer
- 01 Orthopaedic queen size bed
- 01 double bed (1st son using it)
- 01 medium sized bed (2nd son using it)
- 01 small fridge
- 01 large mirror
- 01 bookshelf
- 02 small office cabinets
- Farm implements (hoes, lashers etc, sprayer 1, drip irrigation pipes and hose pipe)
- 01 large brown coffee table with two smaller sides tables
- 01 brown dining and 5 chairs
- 01 Electric blender
- 01 maroon and beige carpet

For the Petitioner

- Helen Kaunda house 294/8137 off Alick Nkata Road, Lusaka
- Respondent's gratuity 50 percent
- 45, 000 CEC Shares
- 48 REES Shares
- Petitioners fixed deposits, savings, undisclosed shares 50 percent
- Farm plot No. LN 78872/1 of 258 hectares, Serenje

- Residential flats located off Great East Road Chipata, Eastern Province on plot number 5472. There are 2x2 bedroomed semidetached flats, 2x1 bedroom flats and 2x1 incomplete flats
- Property built by the petitioner on the Copperbelt, Kitwe
- Star Cottage plot 31182/M in high-cost area, Lusaka
- Mitsubishi Colt Double Cab ACT 5903
- Leyland DAF Truck ABL 1055
- Massey Ferguson Tractor ALJ 7586
- Tractor Disc Harrow
- Off cut chassis for the Mitsubishi
- Egg incubator
- Household fittings (toilets and bath tub)
- Granite decorated wooden kitchen counter
- Gen set
- Roofing materials
- 01 brown executive 3-piece sofa set (removed from matrimonial home)
- 01 black 3-piece sofa set
- 01 brown 3-piece sofa set
- 01 brown room divider
- 01 maroon room divider
- 01 medium sized bed (removed from matrimonial home)
- 01 large deep freezer (removed from matrimonial home)
- 01 medium deep freezer
- 01 upright freezer Samsung
- 01 four plate stove (removed from matrimonial home)
- 01 two plate gas stove and 9kg gas cylinder (removed from matrimonial home)
- 01 large pot, 05 medium flower pots
- 01 tube TV and decoder
- 01 music machine
- 01 washing machine (removed from matrimonial home)

- 01 brown carpet (removed from the matrimonial home)
- 01 black coffee table (removed from matrimonial home)
- 01 beige side coffee table
- 01 mukwa dining table with 02 chairs
- 01 mukwa door
- 01 flash wooden door
- 01 black 3-piece sofa set
- 01 brown 3-piece sofa set
- 01 water grill
- 02 large mirrors (01 broken)
- Assortment of curtains and curtain nets
- 01 bedside drawer (removed from matrimonial home)
- 95 percent kitchen ware (removed from matrimonial home)
- 01 mukwa dining table with 02 chairs

The respondent deposed that his proposal for distribution of the property seeks to ensure that the property is equally and fairly distributed considering the contributions made by the petitioner and the respondent as well as enable the children of the family have an inheritance.

The respondent also filed submissions dated 4th October, 2022. On sharing of property jointly owned by the parties such as the Lusaka West farm, the respondent also referred me to the case of **Scott v Scott**⁵ earlier referred to me by Counsel for the petitioner and submitted that the said case gives two options as the court in the said case guided that:

“The first step towards sharing of the property in equal shares is to ascertain the value of all the improvements on the stand by way of valuation. The valuation can be done by a valuation officer acceptable to both parties and in the absence of agreement, by valuation officers nominated by the parties. Once the value of the improvements is

ascertained we order that the stand be sold and the proceeds shared on equal basis. Alternatively, if either of the parties has sufficient funds of his or her own and is desirous of keeping the stand he or she can do so by paying the other party his or her 50% share based on the valuation. (Emphasis theirs)

On sharing of the matrimonial house in Helen Kaunda, it was submitted that the petitioner made no contributions whatsoever to the acquisition or development of the said property. Counsel for the respondent referred me to the case of **Fabion Ponde v Charity Bwalya**³ and stated that the petitioner failed to show in concrete terms her contribution to the acquisition or development of the property by for example buying building materials, paying for school fees and other expenses and thereby helped the other party channel resources to the property in question. He added that all the receipts the petitioner referred to in her affidavit were in the respondent's name.

Regarding the mortgaged property subdivision 149 of subdivision 6 of subdivision B of farm No. 378A, Chelstone Green, Salama Park, it was submitted that the respondent did not make any financial contributions towards it but made contributions in kind. I was referred to the case of **Pettit v Pettit**⁶ in which the court, *inter alia*, stated that:

“Where a couple by their efforts get a house and furniture intending it to be a continuing provision for them both for their joint lives, it is a family asset in which each is entitled in an equal share. It matters not in whose name it stands, or who stays for what or who goes out for work or who stays at home, if they contribute to it by their joint efforts, the prima facie inference is that it belongs to them both equally.”

On the same issue, I was referred to the case of **Mathews Chishimba Nkhata v Esther Dolly Mwenda Nkhata**¹ in which the Supreme Court stated that:

“In undertaking property adjustment, courts do accept nonfinancial contributions by a spouse...., This consideration in the area of post-divorce settlement of matrimonial property accords with the need to ensure equitable distribution of family property.”

The case of **Muyoyeta v Muyoyeta Appeal**¹⁰ also referred to me by Counsel for respondent goes further to state that:

“Mortgaged property is amenable to property settlement, parties in question will have an interest in the property based on their contribution thereof. The parties must be left more or less at equal disadvantage or advantage whichever way one looks at it after the dissolution of their marriage.”

On the treatment of Start Cottage owned by the petitioner and transferred to the parties’ son Tashaya Munyoro and Star Cottage Stand 31181/M owned by the respondent, it was submitted that the said transfer was aimed at circumventing the wheels of justice by preventing the court from making an equitable and fair order with regard to the said property. It was submitted that both properties were acquired during the subsistence of their marriage.

According to the respondent, the petitioner had not disclosed her plot 31182/M which was acquired during the subsistence of the marriage. That it was brought to the respondent’s attention that the petitioner’s property was transferred to the parties’ son Tashaya Munyoro through a Deed of Gift without the knowledge of the Respondent. It was contended that the petitioner then requested the respondent to transfer his Star Cottage plot 31181/M to her or alternatively, to their son Kudakwashe Munyoro. In this regard, I was referred to the case of **Chibwe v Chibwe**⁴ in which the Supreme Court held, *inter alia*, that:

“Transfer of property could not prevent the court from making an equitable and fair order with regards to the property as the said transfer was an attempt to circumvent the wheels of justice.”

The respondent in his submissions went on to address the treatment of the rest of the properties and cited a number of authorities which, for avoidance of repetition, would be referred to in the determination of this case. It was submitted, with regard to the treatment of the properties such as:

Plot No. 2 Main Road Kasanda Township, Kabwe and small slab at Kasanda Market, Kabwe sold during the subsistence of the marriage to settle farm workers’ salaries; Plot 2492 Mulubila, Kabwe and residential flats located off Great East Road, Chipata on Plot No. 5472; Stand 8787 Mobile Unit Kabwe; Shop No. 56 Helen Kaunda. Other properties are: Shares held by the respondent in Rural Economic Expansion Services Limited (REES) and shares held by the petitioner in the Copperbelt Energy Corporation (CEC); fixed deposits and savings held by the petitioner; motor vehicles acquired during the subsistence of their marriage; petitioner and respondent’s pensions; liabilities in respect of the mortgage on subdivision 149 of subdivision 6 of farm No. 378A and the Agribusiness loan; and consideration of the respondent’s financial status.

Regarding all these issues, it was submitted that there should be fairness in arriving at sharing of property acquired during the subsistence of their marriage. I was in that regard referred to the case of **Fribance v Fribance**⁷ in which the court held, *inter alia*, that:

“Our view is that property settlement should be undertaken on the basis of fairness and conscience; not on an unjustified reference to the 50:50 dogma. Equal rights between husbands and wives do not necessarily translate, in every case, into equal portions of family property, each case should be determined in terms of how much each party contributed and an

appropriate percentage of the matrimonial property apportioned on that basis.....,

Where the respondent shows that the applicant for property settlement was in fact the number one hindrance to the acquisition of the property and that such property was acquired in spite of, rather than with the help of the applicant, such evidence can scarcely be ignored in making property adjustment for the parties, resort to the 50:50 philosophy in sharing such property would clearly be a naked affront to the justice of the situation in those circumstances.....”

Further, I was referred to the case of **Connie Munalula v Donald Mwaba**⁹, with regard to the treatment of pension in which the Supreme Court stated that:

“We accept that naturally a spouse will receive a share of the other spouse’s pension earned during the subsistence of the marriage. For that reason, the respondent’s main grievance in the High Court was that the appellant could not get half of his pension.

In our view, it was erroneous for the magistrate to refuse to give the appellant half of the respondent’s pension on the ground that she did not prove that she shared hers with him.....”

In the final analysis, reference was made to the case of **Fribance v Fribance**⁷ regarding treatment of shares in which it was stated that:

“Our own understanding is that it is possible for parties to a marriage to acquire property during the subsistence of a marriage that is not intended to be for the provision of the family as a whole. Thus, a working woman could acquire with the knowledge or concurrence of her husband, property in the form of land or shares in a company which would have no immediate connection to the needs of the family.

When property settlement becomes an inevitable reality for the parties placed in those circumstances, it would defeat the justice of the case to hold such property as the parties designated as extra personal investment, as amenable to property adjustment merely because it was acquired during the subsistence of a marriage.”

At the hearing, the respondent testified as RWI. He testified that he filed documents which he was relying on as part of his evidence. He testified that during his marriage with the petitioner, his source of income was through formal and informal employment. He stated that most of his earnings were through contract gratuities which were used to invest in his family properties. That he also had a spare parts business such that he used to go to South Africa, India and Dubai in that regard. That he also did minibus business whose proceeds he used to take care of household expenses and school fees as well as provide educational allowances for his children. He stated that at the time he was working for SGS Zambia, in the evenings, he used to do private jobs with Golack Enterprises in Chilenje where he was paid in kind by giving him building materials which he used to build the Helen Kaunda house.

Regarding the reason for the petitioner’s stay at her sister’s house, the respondent stated that it was because the Helen Kaunda house had been put on rent when the petitioner went abroad for her Masters’ Degree. When she returned, notice was given for the tenant to vacate prior to the petitioner taking occupation of the house.

And that regarding the Kabwe Mulubila house, he built it while working in Kabwe though the petitioner was against the idea of building the said house. He stated that the first time the petitioner saw the house, it was at window level and the second time, it was completed. That the only contribution by the petitioner to the Mulubila Kabwe house were a few boxes of tiles.

The respondent then moved on to testify regarding the two completed flats in Chipata, Eastern province while the third flat was incomplete. He stated that

he built the said flats while working from Chipata. He told this court that the petitioner saw the flats after they had been completed. He added that while working in Chipata for the Food Reserve Agency (FRA), he built two flats in Kabwe Mobile Unit of which one is complete while the other is not.

The respondent went further to testify that during the course of their marriage, the couple acquired plots in Kapiri Mposhi high cost area and in Nkuruma area of which he stated that the said properties had not been included in the application for property settlement. That also, he was surprised that plot 2 Main Kasanda in the mine area and a small slab at Kasanda Market had been included for property adjustment when the two were sold. That also, a two tonne canter which he used for building was sold and in its place, bought a Tipper Truck as family property.

The respondent moved on to inform the court that the farm in Serenje was given to him when he was working in Serenje. But since it remained undeveloped for a long time, a check on it years later revealed that someone had built on it though the details at Ministry of Lands were still in his name. It was his view that the said farm should not be included in property adjustment.

The respondent denied owning a property in Chingola as the said property belongs to his parents who acquired it in 1970s. That his bothers in the United Kingdom and Canada respectively used to send money to him through Western Union to develop the property whose works were supervised by the parties' second born son and that a two roomed house was built on the said property. The respondent told this court that the said property is still in his late father's name and therefore, it should not be part of property adjustment.

He testified that sometime in 2020/21, the petitioner and her brother, without his consent, got the tractor and a 3.5 tonne Mitsubishi Canter as her sister wanted to use the tractor. He stated that he pays the workers at the Serenje farm and Lusaka farm for looking after the cattle. That the Serenje farm, from 22 cattle now has 15 after the others died due to foot and mouth disease while

the Lusaka farm has four cattle. That the Lusaka West farm also had 33 goats which had since reduced to 21 as most of them died for eating maize and comb skin. The respondent denied solely benefitting from the two farms.

It was his testimony that since the petitioner wants his gratuity to be part of property adjustment, in similar manner, her pension should be part of property adjustment to be shared equally as they both accrued during the subsistence of their marriage. He added that even her NAPSA contributions whether lumpsome or monthly payments should be part of property adjustment as it accrued during the subsistence of their marriage. He further added that his shares and her shares should also be included as part of property adjustment.

Regarding the Deed of Gift to their two children, the respondent conceded that the same was discussed and agreed upon as testified by the petitioner that the same be done until Tashaya who was aged 26 years in 2021 had completed his university which was within a year as well as wait until Kudakwashe was stable, who in 2021 was aged 28 years. That without his consent, the petitioner informed the children regarding the gifting of the properties and she went ahead to execute a deed of gift for Tashaya, their second born son.

The respondent moved on to inform the court that in the petitioner's application for property adjustment, the petitioner left out her properties. That one such property is on the Copperbelt though the location was unknown to him which his son informed him that he helped the petitioner build a house thereon which was on rent. He testified that the petitioner has fixed deposits and savings which she had not disclosed to the respondent. He testified that the petitioner's fixed deposits and savings which accrued during the subsistence of their marriage should be part of property adjustment. In addition, that the petitioner's one million (1,000,000.00) shares acquired in their daughter Kapambwe's name should be part of property adjustment.

Regarding the Agribusiness loan obtained by the petitioner, the respondent stated that the said loan of K350,000.00 was obtained secretly by the petitioner

for her own activities rather than for the family, therefore, it should be her responsibility to settle it. That on the sum of K601,000.00 loan obtained by the petitioner had been settled as she had so far paid K554,543.82 leaving a balance of K36,000.00. That therefore, it was incorrect that on the said loan the petitioner is still owing K482,000.00.

It was the respondent's testimony regarding the spare parts for the Layland Daf Truck that the same came with the truck hence should not be part of property adjustment as the same are for Mr. Mulomo. That he sold the said parts on behalf of Mr. Mulomo and gave the money to Mr. Mulomo's sister of which Mr. Mulomo had since requested for the document as proof of sale of the parts.

The respondent referred to exhibit PMM1 with receipt Nos. 169 indicating 10 windows; and 183 both indicating the sum of K1,800,000.00 (unrebased) respectively; and No. 191 indicating the sum of K240,000.00 for window frames which purchase was done by Stanslous Mwape, the brother to the petitioner as the said items were not for the Lusaka West farm. The respondent also referred to exhibit PMM36 with receipt No. 101242 whose items were bought by the petitioner's cousin Matthews Mwape.

On the purchase of the Lusaka West farm Lot 10198, the respondent testified that it was purchased by him on 22nd October, 1999 when he was running a spare parts business and doing private jobs at Golack enterprises and had capacity to buy the farm whose sale price was K3,500.00 rebased. He stated that he did not agree that the Lusaka West farm be sold and proceeds shared. According to him, the property should be valued so that he can buy off the petitioner's interest in the property. He added that he was willing to let go of his interest in the Salama flats and would give up his interest in the Helen Kaunda house so that the petitioner could also give up her interest in the Lusaka West farm.

In cross examination, the respondent stated that the Lusaka West farm is on title jointly owned by the parties. That the letter of sale for the Lusaka West

farm is in joint names and that the consideration for it does not indicate that it was paid for by the respondent. He stated that the petitioner built the manager's house at the Lusaka West farm as at the time, the respondent was working in Chipata, Eastern province. When referred to exhibit PMM20 - the respondent stated that the Mortgage Deed has provision for 15 percent interest while exhibit PMM16 is an offer letter for the loan and PMM17 is for the Public Service Pension Fund.

When referred to exhibit PMM18 in the petitioner's affidavit in reply, the respondent indicated that he had seen an amount from Winfridah Mwanza to Mr. Mwanza the seller. When referred to exhibit PMM19, the respondent stated that he had seen the letter by the petitioner to the Public Service Fund and that he had seen the difference the petitioner had borrowed from her sister. He stated that he did not contribute anything towards the purchase of the Salama Park property yet this was the property he told the court that he was willing to let go of his interest. He conceded that he made no monetary contribution to this property. It was the respondent's testimony that any outstanding payments to the mortgage would be deducted from the petitioner's pension.

The respondent told this court that he was not aware of the Agribusiness Loans for civil servants until the time the petitioner requested him for help to deal with it when an issue arose. That the petitioner used the loan money to invest in Memako which is under distress as per the petitioner's affidavit in reply. Regarding the One Million Airtel shares under Kapambwe, the respondent stated that he had no documentary proof regarding the same. When referred to exhibit PMM23 on the Airtel shares, the respondent stated that it reveals the names thereon as Patricia Mwape, Tashaya and Aness Kapambwe as owners of the shares while the first born is not included.

The respondent was also referred to the petitioner's affidavit in reply of which he conceded that there were periods he was not in formal employment. When referred to exhibit PMM3 in the affidavit in reply, the respondent conceded that

those were lease agreements the petitioner used to pay rentals in Nyumba Yanga before the couple built their house.

On the Star Cottage Stand No. 31181/M/2 and 31182/M, the respondent conceded that he had discussions with the petitioner to gift them to their two sons. He conceded that he had seen the Deed of Gift the petitioner had signed or executed. And that exhibit PMM12 for Lot 31182/M is no longer in the petitioner's name but in their second born son's name Tashaya Munyoro. That also, he had seen the draft Deed of Gift he should have signed in favour of their first born son Kudakwashe Munyoro which had been exhibited.

He informed this court that he did not execute the Deed of Gift to gift Lot 31181/M/2 to Kudakwashe Munyoro, and therefore, Lot 31181/M/2 is still in his name despite the agreement with the petitioner. That meanwhile, Lot 31182/M which is in their second born son's name Tashaya Munyoro gifted to him by the petitioner should be included in property adjustment as well as Lot 31181/M/2 exhibited in PMM15 which is still in his name is available for property adjustment.

Regarding the two Serenje farms, each in their individual name respectively, the respondent stated that it was agreed that each would have ownership in that regard accordingly. And that on the slab at Kasanda Market and the Kasanda plot were jointly owned. He conceded that the slab at Kasanda market and Kasanda property were sold without the petitioner's consent. That however, the proceeds were used to pay workers as per the averment in his affidavit in opposition. He conceded that while he was in Chipata Eastern province, the petitioner spent her time at Lusaka West farm which is the matrimonial farm.

Regarding the tractor and the Mitsubishi canter, the respondent submitted that they are both in the petitioner's name yet he lodged a complaint against her at West Wood Police regarding the said vehicles. He stated that apart from

the Tractor and Mitsubishi Canter which the petitioner got, the rest of the vehicles were in his possession

Regarding the two Chipata flats, the respondent denied that they were not matrimonial property though the petitioner contributed a few boxes of tiles. It was his testimony that he had been getting rentals from the Chipata flats. That also, the three Kabwe flats are on rent and it is him who collects rentals. That further, for the one flat at Mobile Unit, it is on rent and he is the one who collects rentals. He testified that in Kapiri Mphoshi, there were plots which were sold. According to the respondent, all these properties are meant for the inheritance of the six children; three which he has with the petitioner and three other children he fathered outside wedlock.

That for the Kitwe flats which he alleged the petitioner has, the respondent stated that he had no proof or documentary evidence in that regard.

He stated that there are 22 cows and 21 goats. That at ZCF where he was working, he stated that the 31st August, 2022 was his last day such that he was scheduled to receive his gratuity for 2019/2022 contract now that the contract had come to an end. He testified that he also contributes to NAPSA. He maintained that his gratuity and the petitioner's pension should be part of property settlement. That however, the amount of the petitioner's pension is unknown so was the sum of his gratuity. He stated that it was unknown whether he was going to have another contract or not.

He denied solely benefiting from the Lusaka West farm and Serenje farm on the basis that their son was also benefiting as he was doing activities on the farm. That for the petitioner, she stays in one of the flats in Salama Park while he was not aware whether the other flat was on rent or not.

There was nothing in re-examination.

This marked the close of the respondent's case.

I have considered the viva voce evidence of the parties; affidavit evidence and skeleton arguments filed by Counsel for the parties.

This judgment is squarely centred on sharing of matrimonial property between the petitioner and the respondent following dissolution of their marriage. **Section 55 (1) (a) and (b) of the Matrimonial Causes Act** gives jurisdiction to this court in matters of this nature as the section provides that:

(1) The Court may, upon granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter, whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute, make any one or more of the following orders:

(a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as the court may specify in the order for the benefit of such a child, such property as may be specified in the order, being property as may be specified in the order, being property to which the first-mentioned party is entitled, either in possession or reversion;

(b) an order that settlement of such property as may be specified, being property to which a party to a marriage is entitled, be made to the satisfaction of the Court for the benefit of the other party to the marriage and of the children of the family or either or any of them;

I am alive to the testimony of the respondent that the properties the couple acquired are for the inheritance of the six children; three which he has with the petitioner and three other children he fathered outside wedlock. On this aspect, a reading of **Section 55 of the Matrimonial Causes Act No. 20 of 2007** explicitly states that it concerns sharing of property between parties to the marriage and children of the family.

At this point, it is imperative to ascertain the meaning of '*child of the family*' in view of the fact that the respondent has included his three other children born from another woman. In the case in casu, paragraph 6 of the petition for dissolution of the marriage states that:

There are three children of the family namely; Kudaskwashe Munyoro aged 28 years (M); Tashaya Munyoro aged 26 years (M) and Kapambwe Munyoro aged 24 years (F) who are of majority age and have completed tertiary education.

In the judgment on dissolution of the marriage, the learned Judge noted at page J2 under the part headed "*pleadings*" that: *there are three children of the family aforementioned.* I also had occasion to check the meaning of '*child of the family*' from <https://www.lexisnexis.co.uk> which heavily relied on Section 52(1) of the Matrimonial Causes Act of 1973 and defined the phrase as:

- *a child of both parties, and*
- *any other child who has been treated by both parties to a marriage as a child placed with the parties as foster parents by a local authority or voluntary agency.*

Also, **Section 5 of the Matrimonial Causes Act No. 20 of 2007** defined '*child of the family*' couched as follows:

(1) For the purposes of the application of this Act in relation to a marriage-

(a) a child adopted since the marriage by the husband and wife or by either of them with the consent of the other;

(b) a child of the husband and wife born before the marriage, whether legitimated by the marriage or not; and

(c) a child of either the husband or wife, including a child born outside wedlock to either one of them and a child adopted by either of them, if at

the relevant time the child was ordinarily a member of the household of the husband and wife and accepted by both as a member of the family;

shall be deemed to be a child of the family, and a child of the husband and wife.

Provided that a child born before the marriage, whether legitimated by the marriage or not, who has been adopted by another person or other person shall be deemed not to be child of the marriage.

This means that 'child of the family' refers to children born between the parties or from one of the parties to the marriage or children born outside wedlock and are members of the household accepted by both parties to the marriage as children of the family. In the divorce petition filed by the petitioner and during these proceedings, it was very vivid that the petitioner has not accepted the respondent's children as children of the family.

In any case, there is evidence on record that for 10 years, the respondent concealed from the petitioner his relationship with the other woman including the three children from the said union. The said children were not members of the household of the parties herein and were not accepted by the petitioner and are therefore not children of the family as they are outside the provisions of the law in as far as these proceedings are concerned. (*emphasis mine*)

Therefore, it must be put on record that in the case in *casu*, the properties acquired by the parties during the subsistence of their marriage would be shared between the parties to the marriage and/or the three children of the family aforementioned as are mentioned in the petition namely: Kudaskwashe Munyoro aged 28 years (M); Tashaya Munyoro aged 26 years (M) and Kapambwe Munyoro aged 24 years (F). It follows therefore, that the children the respondent has outside wedlock will not be considered in this judgment. Further, the issue of inheritance raised by the respondent for the six children does not arise at this stage and is a non-issue in this judgment.

Coming to the substantive issues in the case in *casu*, the starting point is consideration of what amount to family property subject of property adjustment. I wish to make reference to the holding in the case of **Mathews Chishimba Nkhata v Esther Dolly Mwenda Nkhata**¹ referred to me by Counsel for the petitioner in which the Supreme Court guided that:

“The first thing that any court considering a property adjustment application is to ask itself whether the property concerned is family property and thus amenable to property settlement. ...”

The second important issue for the court to consider is the definition of matrimonial or family property. There is plethora of authorities on this subject one of which is the celebrated case of **Watchel v. Watchel**² in which the court stated that:

“Family assets have been defined as items acquired by one or the other or both parties married with the intention that these should be continuing provision for them and the children during their joint lives and should be for the benefit of the family as a whole. Family assets include those capital assets such as matrimonial home, furniture and income generating assets such as commercial properties.”

Further, on the same principle, the case of **Fabion Ponde v. Charity Bwalya**³ referred to me by Counsel for the petitioner states that:

“...We underscored the point that it does not matter that financial contribution was not made by both spouses to the acquisition or development of family assets; what matters is that the parties to the marriage make contributions either materially or in kind towards those assets...”

Further, the case of **Mathews Chishimba Nkhata v. Esther Dolly Mwenda Nkhata**¹ on property adjustment provides guidance as the Supreme Court stated that: -

It is settled that in understanding property adjustment courts do accept non-financial contributions by a spouse in the form of, for example, tending the house, providing for various family needs and thus relieving the other spouse of some domestic and financial burdens. Such contribution, like financial contribution, entitles a spouse to a share of the matrimonial property ostensibly purchased or acquired solely by the other spouse. This consideration in the area of post-divorce settlement of matrimonial property accords with the need to ensure equitable distribution of family property. In this regard, the court views the contribution of the parties to the acquisition of property broadly.

Further, the case of **Rosemary Chibwe vs. Austin Chibwe**⁴, on property adjustment deserves consideration as the Supreme Court went further and guided when it held, *inter alia*, that:

(iii) In making property adjustments or awarding maintenance after divorce the court is guided by the need to do justice taking into account the circumstances of the case.

I have, for avoidance of doubt, taken the trouble to refer to a number of decided cases on property settlement which provide guidance on the basis for benefiting or having a share in the family property the parties acquired during the subsistence of their marriage. From the cited cases aforementioned, it is clear that a party is entitled to a share of the matrimonial property provided they demonstrate that they made financial, material or contributions in kind to the acquisition of the property. This is the guiding principle which I, and indeed any court properly directing itself ought to apply in a matter such as the one before me.

Further, apart from the parties' contributions to the acquisition of the matrimonial property, I am cognisant of the guidance in the case of **Pettit v. Pettit**⁶ in which it was stated that:

“The Court should look at the intention of the parties and their contribution to the acquisition of the matrimonial property. If their intention cannot be ascertained by way of an agreement, then the Court must make a finding as to what was going on in their minds at the time of the acquisition of the property.”

This is another consideration I shall take into account by ascertaining the intention of the parties to the marriage.

Coming to the substantive issues from the evidence on record, the petitioner sought to show her financial, material and contributions in kind towards the acquisition of the matrimonial property. She also endeavoured to show which properties the respondent did not contribute at all or otherwise to their acquisition. One such property is the Salama Park Subdivision 149 of Subdivision 6 of Subdivision B of Farm No. 378a Chelstone Green, Lusaka which was acquired via a mortgage and funds borrowed from her late sister. She endeavoured to show that the respondent made no contribution whatsoever, be it financial, material or in kind to its acquisition.

In his *viva voce* testimony during cross examination, the respondent conceded that he made no contributions whatsoever towards the acquisition of the Salama Park property.

Consequently, it is my finding that the respondent having made no contributions whatsoever towards the acquisition of the Salama Park property, the same solely belongs to the petitioner. Without further ado, the Salama Park Subdivision 149 of Subdivision 6 of Subdivision B of Farm No. 378a Chelstone Green, Lusaka property is awarded to the petitioner forthwith. This is also in keeping with the case of **Annie Scott v. Oliver Scott**⁵, referred to me by Counsel to the petitioner in which the Supreme Court held, *inter alia* that: -

- a. Any property purchased by the spouse with his or her own money presumptively belongs to the purchaser.*

Coming to the acquisition of other properties, the petitioner stated that during the period January, 1997 to 2000, the respondent was not in gainful employment but was running a family business financed by the petitioner and her brother Stanislaus Mwape and most of the proceeds from the business were used to purchase Lot 10198/M Lusaka (or Lusaka West farm jointly owned by the parties at a cost of K3,500,000.00 (unrebased). That in order to finance the respondent's business, the petitioner obtained a household loan of K2,000,000.00 (unrebased) from her employer which was partly used to finance the family business as per exhibit PMM1 her payslip for January, 1997 showing deductions for the said loan.

The petitioner went on to state that during the period September, 2007 to around May, 2008 again, the respondent was not in gainful employment such that the respondent, herself and their three children stayed at her young sister Winniefrida Mwape's residence in Northmead as the petitioner was financing the building of the farm house at Lot 10198/M Lusaka. Meanwhile, the matrimonial property in Helen Kaunda was put on rent to help the family raise some income.

The petitioner further alluded to the period between 1995 to 2002 when house No. 294/8137 off Alick Nkhata Road, Lusaka (the matrimonial house) was under construction. She informed this court that during this period, she was responsible for payment of rentals at the property the family rented as per her affidavit in support. That she paid for some construction works at the matrimonial home in 2002 as the property was in semi-finished state when the family moved in sometime in 2002. She said she financed the rebuilding of the wall fence, drive way, renovations of the kitchen, worked on the plumbing works among other things. She added that meanwhile, the said property is in the respondent's name as per the Certificate of Title marked PMM4.

She also informed this court that in addition, the respondent also used to siphon family money to a parallel family he had concealed for 10 years from

which he had fathered three children outside wedlock as per exhibit PMM5, copies of bank deposit slips for the years 2012 to 2013.

Further, the petitioner stated that between January 2013 to August, 2016 the respondent was again not in gainful employment as per exhibit PMM2 the respondent's payslip from Zambia Co-operative Federation Limited showing 1st September, 2016 as the date he was employed. She averred that during this period, she single headedly paid for household expenses including university and school fees for the three children of the family namely Kudakwashe, Tashaya and Kapambwe. In that regard, the petitioner referred to exhibit PMM3 the fee outline and a bank transfer from her account to Kalulushi University for Kapambwe's fees; as well as various receipts for payment of fees for Kapambwe Munyoro and Tashaya Munyoro.

It was her testimony that on his part, the respondent paid less than 5 percent of the school fees for the last-born child Kapambwe from mid-2008 to December, 2012. Thereafter, his support to the family was very erratic.

I have noted that while the petitioner gave an elaborate account of her contributions and highlighted the periods when the respondent was not in gainful employment hence the petitioner heavily supporting the family financially and otherwise, for their day to day survival, the respondent failed to challenge this testimony. On her part, the petitioner has demonstrated that she provided all financial requirements for two of their children who were university students and household expenses as well as provided support to the development of family properties. Also, there is evidence that the petitioner got loans which were invested in the family business which was not disputed by the respondent.

The same cannot be said about the respondent. He failed to challenge this evidence. In fact, in his affidavit in opposition and in his oral testimony, he conceded that there were periods he was not in gainful employment. However,

the respondent did allude to a period when he did private jobs at Golack where he was paid in building materials which were used towards construction of the Helen Kaunda house.

The respondent also sought to rely on some receipts for payments which were in his name to show that he was the one who provided the finances. However, there is undisputed evidence on record that the respondent would put receipts in his name for items bought using the petitioner's money.

Also, on the respondent's part, what stood out was that whenever he was in gainful employment, he used to reside away from home and hardly provided for his family. In addition, he had a tendency of acquiring plots in the respective places he worked from and built houses such as the farm in Serenje, houses in Kabwe, houses in Chipata which are all in his names. Meanwhile, back home in Lusaka, the petitioner was left to fend for the family. In fact, evidence on record from the petitioner is to the effect that the respondent stopped contributing to household expenses in 2008 up to about mid-2017.

To this evidence, I have noted that during all the periods the respondent worked away from home, he failed to give an account of his contribution towards the family in Lusaka. In fact, in cross examination, when the respondent was referred to the petitioner's affidavit in reply, he conceded that there were periods he was not in formal employment. And when he was referred to exhibit PMM3 in the affidavit in reply, the respondent conceded that those were lease agreements the petitioner used to pay rentals in Nyumba Yanga before the couple built their house. I have noted that while the petitioner provided the periods in which the respondent was not in gainful employment, the respondent failed to do so neither challenged the periods indicated by the petitioner.

Therefore, I have accepted that during the period the respondent was in gainful employment and working away from the family home, his support to the family

was erratic such that the petitioner was consumed in family responsibilities while the respondent was busy building properties such as the one in Chipata, Eastern province plot No. 5472 off Great East Road, plot No. 2492 Mulubila, Kabwe, Mobile Unit in Kabwe being Stand 8787, plot No. 5472 former Namboard area, Kapiri Mposhi plots and Nkuruma plots. By the petitioner taking on household responsibilities, the respondent then channelled his energy to building real properties. By so doing, the law provides that the petitioner contributed in kind to the acquisition of the properties built by the respondent in the various towns of the country aforementioned. The case of **Fabian Ponde v. Charity Bwalya**³ speaks to this as the court held, *inter alia*, that:

2. *It is also settled that it does not matter whether or not both spouses contributed financially or materially to the acquisition or development of the family assets; and that a party to the marriage does contribute either materially or in kind to those assets.*

Therefore, the petitioner acquired an interest in the properties built by the respondent in the respective towns earlier alluded to. This is in line with the holding in the case of **Fribance v Fribance**⁷ referred to me by Counsel for the petitioner in which in *obiter*, Lord Denning stated that:

“...it so happened that the wife went out to work and used her earnings to help run the household and buy the children’s clothes, whilst the husband saved. It might very well be the other way round... The title to the family assets does not depend on the mere chance of which way round it was. It does not depend on how they happened to allocate their expenditure. The whole of their resources were expended as joint benefit... And the product should belong to them jointly. It belongs to them in equal shares.”

It follows therefore that the argument by the respondent that the petitioner did not contribute to the acquisition of the properties built outside Lusaka

aforementioned is an argument in futility. The same applies to the argument that because the petitioner only contributed a few boxes of tiles towards the construction of the Chipata, Eastern province and Kabwe properties has no leg to stand on and the same is dismissed.

In keeping with the **Fribance⁷ case** the properties built by the respondent dotted across the country belongs to both of them in equal shares. This is regardless of whose name appears on the title as the owner of the property. I am fortified by the guidance in the **Halsbury's Laws of England Vol. 19, 3rd Edition** which states that:

"where a spouse contributes to the purchase of the family property even if it is registered in the name of the other spouse, the property belongs to both of them in equal shares.

The properties in which the petitioner acquired an interest by her contributions in kind are as follows: the flats in Chipata on Stand 5472, Eastern province, the flats in Kabwe Mobile Unit Stand 8787, the house on Stand 2492 in Mulubila Kabwe, Nkuruma plot area and former Namboard area Stand 5472.

Despite the interest of the petitioner in these properties, for reasons that will become apparent in this judgment and in the interest of justice, I have awarded the respondent the flats at Mobile Unit, Kabwe that is, Stand No. 8787.

For the rest of the properties aforementioned, being the Chipata flats, Mulubila house in Kabwe, the Kapiri Mposhi plots and Nkuruma plots, I order that they be valued by Government Valuers or by the Valuator agreed by the parties whose payment shall be borne by both parties in equal measure. Thereafter, the properties to be sold and proceeds shared on an equal basis. Put in another way, on a 50/50 percent basis as the justice of the case demands.

Further, there is evidence on record that the respondent sold the residential plot No. 2 main Kasanda Road, Kabwe and a plot/slab at Kasanda Market both

jointly owned by the parties without the consent of the petitioner. After selling, the respondent indicated that the proceeds were used to pay the workers. The authenticity of that statement has not been proved hence inadmissible in this judgment. However, what is certain is that the petitioner did not benefit from the proceeds of the sale. There is also evidence from the respondent that he sold the Kapiri Mphoshi plots. Again, there was no explanation or proof on how the proceeds were used and if the petitioner had a share of the proceeds. Therefore, the interest of the petitioner in this regard will be taken into account later in this judgment.

I have also taken into account of the fact that the respondent has been solely collecting and enjoying rentals from the flats in Chipata, Eastern province, from the flats in Kabwe at Mobile Unit and Mulibile house in Kabwe without sharing the proceeds with the petitioner. Also, the respondent has been using and benefiting from the matrimonial farm at Lusaka West to the detriment of the petitioner. This too shall be taken into account later in this judgment.

Coming to the Serenje farms, the parties have consensus that each ought to be given the property registered in their respective names. Of these farms, Farm No. LN 78873/1, Serenje is registered in the petitioner's name while Farm No. LN 78872/2 Serenje is registered in the respondent's name.

I, therefore, award the petitioner farm No. No. LN 78873/1, Serenje which is registered in her name while the respondent is awarded farm No. LN 78872/2 Serenje which is registered in his name.

I now move on to deal with the properties which the parties discussed and agreed to gift their two sons. Lot No. 31182/M, Star Cottage, Lusaka in the name of the petitioner was agreed to be gifted to their second son Tashaya Munyoro while Lot No. 31181/M, Star Cottage registered in the respondent's name was agreed to be gifted to their first born son Kudakwashe Munyoro. The petitioner proceeded to act on the agreement and the said flat No.

31182/M is now registered in the name of Tashaya Munyoro. Meanwhile, there was evidence that a Deed of Gift was ready and awaiting signing by the respondent to gift property No. 31182/M from him into their son's name Kudakwashe Munyoro. The said Deed of Gift was exhibited in these proceedings as exhibit PMMM14. This is clear that the issue of gifting the flats to their sons was discussed and concluded. Somehow for unexplained reasons, the respondent grew cold feet to gift the said property to Kudakwashe Munyoro which was clearly manifest in his oral testimony before court.

Suffice to mention that I have noted that according to the respondent, the petitioner and him agreed to gift the respective properties to their sons when Kudakwashe became stable and after Tashaya completed university which was to take effect within a year. It must be noted that at the time of the discussion and agreement with the petitioner, Kudakwashe was 28 years while Tashaya was 26 years and in his final year at university. In my view, the condition set by the respondent as the basis for executing the Deed of Gift to the two sons had already taken effect and therefore, he was duty bound to act on the agreement concluded with the petitioner. It is my finding that the respondent has no excuse to hold back executing the Deed of Gift which was already prepared.

Further, according to the respondent, property No. 31182/M gifted by the petitioner to Tashaya Munyoro should be part of property adjustment. However, there is no law for reversal as prior to dissolution of the parties' marriage and indeed prior to filing this application, ownership of property No. 31182/M had already passed to Tashaya Munyoro. As soon as the Deed of Gift was executed and perfected, property No. 31182/M in Tashaya's name ceased to be family property thereby making it exempt from these proceedings. In any case Tashaya Munyoro is not a party to these proceedings. Therefore, there is no way his property could be taken away from him without according him the right to be heard.

Looking at the steps taken so far of gifting the properties to their sons; that is, the petitioner having acted on her Deed of Gift while the respondent's Deed of Gift was ready awaiting the respondent's signature and the conditions set by the respondent having been met, it is too late at this stage for the respondent to chicken out. Further, from the respondent's testimony before me, he gave an indication that the agreement was sealed as he informed this court that it was agreed between them to gift the properties to their children. Clearly, the respondent led the petitioner to believe that he was going to gift his property to Kudakwashe Munyoro such that the petitioner proceeded to act on transferring her flat to Tashaya Munyoro.

Having said the above, the justice of the case demands that both sons should receive a gift from their parents as per their parents' agreement (the parties) herein. At this point, for emphasis purposes, I wish to reproduce **Section 55 (1) (a) of the Matrimonial Causes Act** which states that:

(1) The Court may, upon granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter, whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute, make any one or more of the following orders:

(a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as the court may specify in the order for the benefit of such a child, such property as may be specified in the order, being property as may be specified in the order, being property to which the first-mentioned party is entitled, either in possession or reversion; (emphasis mine)

Using the power deposed in me under this section, I, in like manner, order that property No.31181/M, Star Cottage, Lusaka which is in the respondent's name is given to Kudakwashe Munyoro in accordance with the Deed of Gift agreed by

the parties to execute for the benefit of the children of the family. To that effect, I order a transfer to be effected at Ministry of Lands to change the property aforementioned from the respondent's name into Kudakwashe Munyoro's name and it shall solely be owned by Kudakwashe Munyoro. For avoidance of doubt, I must stress that change of ownership at Ministry of Lands must be effected from the respondent's name into Kudakwashe Munyoro's name forthwith.

I now move to real property which covers matrimonial farm No. L/10198/M Lusaka West, matrimonial house at plot 294/8137 off Alick Nkhata Road, Helen Kaunda, Lusaka and the shop No. 56 in Helen Kaunda to which both parties contributed. Then I will end with moveable property such as household goods and equipment, animals and vehicles and other valuables such as seeds, shares, pension, gratuity, NAPSA contributions etc.

On real property, evidence on record suggests that the couple acquired the Lusaka West farm, Helen Kaunda which is the matrimonial house and the shop.

In considering the Lusaka West farm, evidence on record suggests that it is in joint names and each contributed financially, materially and in kind to the development of this property. According to the petitioner, during the period January 1997 to 2000 the respondent was not in gainful employment but running a family business financed by the petitioner and her brother Stanislaus Mwape and that most of the proceeds from the business were used to purchase Lot 10198/M Lusaka (or Lusaka West farm which is jointly owned by the parties at a cost of K3,500,000.00 (unrepaid). That further, the petitioner contributed by constructing the Manager's house and put up the second bore hole. That her contribution towards the construction of the main house was 80 percent while the respondent contributed 20 percent which was towards the barns and installation of phase three-electricity.

According to the respondent he was the one who bought the Lusaka West farm on 22nd October, 1999 when he was running a spare part business and working at Golack enterprises. According to him, the petitioner's contribution to the Lusaka West farm was 35 percent. However, the respondent failed to challenge the petitioner's evidence that the said business he alleged to be running was financed by the petitioner. It therefore follows that the petitioner equally contributed financially to the acquisition and development of the Lusaka West farm at a percentage higher than 35 percent alluded to by the respondent.

It is my finding that while the petitioner told this court that her contribution towards the development of the property was 80 percent while the respondents' was 20 percent which was disputed by the respondent, the respondent failed to elaborate the quantum of his contribution over and above that of the petitioner. Analysing the evidence on this aspect, my finding is that both contributed equally to the acquisition and development of the Lusaka West farm.

I have noted that each of the parties strongly implored this court to award them the Lusaka West property. For the reasons alluded to above, I am of the view that it is in the interest of justice to have the property sold and proceeds shared between the parties.

On the percentage of sharing the proceeds of the sale, I did indicate that I will take into account the joint properties which the respondent sold without the consent or sharing the proceeds with the petitioner. I also indicated that for the rentals the respondent has enjoyed from the houses on rent in Kabwe and in Chipata, Eastern province and from the Lusaka West farm; as well as the siphoning of family property to support his parallel family concealed from the petitioner for 10 years as per exhibit PMM5, copies of bank deposit slips for the years 2012 to 2013 shall be taken into account in this judgment. This I do now.

For the above stated reasons, my finding is that the sharing of the proceeds of the Lusaka West farm shall not and cannot be on a 50/50 percent basis as there is need to compensate the petitioner for her loss alluded to above.

I, therefore, order that the parties shall share the proceeds of the Lusaka West farm in the ratio of 70 to 30, that is, 70 percent for the petitioner and 30 percent for the respondent. The property shall be valued by Government Valuers or Valuers agreed by both parties whose cost shall be borne by both parties in equal measure. Thereafter, the property Lusaka West farm shall be sold and proceeds shared as ordered herein. However, either party could buy off another's interest in this property by payment of the share of that party within 30 days from the date of the Valuation Report, in default the property to be sold as guided in this judgment.

Further, to fully compensate the petitioner, I have also awarded her the shop in Helen Kaunda to cover for her loss of the family money and assets alluded to earlier.

Regarding the Helen Kaunda property which is the matrimonial home, there is evidence that both parties contributed to the acquisition and development of the said properties. Both the house and the shop shall be sold and proceeds shall be shared on a 50/50 percent basis following the valuation by Government Valuers or the Valuator of the parties' choice whose costs shall be borne by both parties in equal measure.

Regarding the Chingola land, I have been persuaded by the respondent that the same is property for his parents which was acquired in the 1970s. The petitioner failed to challenge the fact that it is property belonging to the respondent's parents. Therefore, the same is exempt from property adjustment in this matter.

Similarly, the respondent failed to prove that the petitioner has a property in Kitwe which is subject of property adjustment. The duty to prove the existence

of this property falls squarely on the respondent. This was the guidance in the case of **Kunda v Konkola Copper Mines Plc Appeal No. 48 of 2005 (unreported)**, in which it was stated that:

"...he who alleges must prove the allegations. This principle is so elementary, the Court has had on a number of occasions have to remind litigants that it is their duty to prove their allegation. Of course it is a principle of law that he who alleges must prove the allegations."

As it is, the respondent failed to prove the assertion that the petitioner has a house in Kitwe. Therefore, the assertion on the Kitwe property is dismissed.

On the residential plot in Serenje Plot SER/1720, according to the respondent he lost this property when it remained undeveloped for a long time. The petitioner failed to challenge this evidence. It follows therefore that this property does not exist and therefore is not subject to property adjustment.

I move on to consider the issue of shares, gratuity, pension and NAPSA contributions of the parties. There is evidence on record that the respondent has shares in Rural Economic Expansion Services Limited (REES) while the petitioner has shares in Copperbelt Energy Corporation, savings and fixed deposits. That there are also (1,000,000) One Million shares in Airtel held in the names of Patricia Mwape (the petitioner), Tashaya and Aness Kapambwe as owners.

The evidence on record suggests that the respondent has gratuity pending to be paid, NAPSA contributions for both parties, monthly and lumpsome payments and the petitioner's pension yet to be paid. I have noted the submissions of the parties that these too need to be shared between them, that is, the proposal by the respondent of sharing at 50 percent between the parties of his unpaid gratuity and petitioner's pension respectively. That, the same should apply to their shares and NAPSA contributions whether they be

monthly payments or otherwise. The petitioner too holds a similar view of sharing the said properties.

On the issue of gratuity, pension, shares and NAPSA payments, the law governing these issues is **Section 56 (1) (g) and (2) of the Matrimonial Causes Act** covers these issues. For ease of reference, I will reproduce it. The Sections states that:

56. (1) Subject to the provisions of this section, the Court may, in any matter or cause in which application is made for the maintenance of a party to a marriage, or of children of the family, other than proceedings for an order for maintenance pending the disposal of proceedings, make such an order on such application as it thinks proper having regard to-

(g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit, such as a pension, which as a result of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

(2) In making an order under subsection (1), the Court shall seek to place the parties, so far as it is practicable and just to do so, having regard to their conduct, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged their financial obligations and responsibilities towards the other.

Further, the case of **Fribance v Fribance**⁷ regarding treatment of shares in which it was stated that:

“Our own understanding is that it is possible for parties to a marriage to acquire property during the subsistence of a marriage that is not intended to be for the provision of the family as a whole. Thus, a working woman could acquire with the knowledge or concurrence of her husband,

property in the form of land or shares in a company which would have no immediate connection to the needs of the family.

From the facts of this case, and taking into account the provisions of the law and case law referred to herein on this subject, the petitioner awaits payment of her pension while the respondent awaits payment of his gratuity. This means that each party has a benefit of a lumpsum money to themselves in the nearby future.

With this law in mind mirrored with the proposals by the parties' regarding shares, savings and fixed deposits, pension, gratuity and NAPSA payments whether lumpsum or monthly payments, I am called upon to look at the practicality of their submissions and whether the submissions of the parties would promote a clean break. For instance, the respondent suggests that the petitioner should render an account on the dividends issued by the Copperbet Energy Cooperation (CEC) during the subsistence of their marriage and the same to be shared equally. Also, that they share in monthly NAPSA payments which go on until the beneficiary passes on. It therefore follows that the parties would have continued interaction and cause possible litigation until they expire from the face of the earth.

Clearly, taking this route is practically impossible and would not bring finality to this case. Superior Courts have frowned upon litigation that is in perpetuity as was the position in the case of **Mike Hamusonde Mweemba vs. Kamfwa Obote Kasongo, Zambia State Insurance Corporation Limited (Intended Joinder)**.¹¹ In the said case, the court dealt with the principle on finality of litigation in which the court referred to the cases of *Simbeye Enterprises Limited and Another v Ibrahim Yousuf SCZ Judgment Number 36 of 2000 (unreported)*; *Attorney General v Tall and Another (1995 - 1997) Z.R. 54* and *Zulu v Avondale Housing Project (1982) Z.R. 172*, where the Court said:-

“I would express the hope that trial Courts will always bear in mind that it is their duty to adjudicate upon every aspect of the suit between the parties so that every matter in controversy is determined with finality. A decision which because of uncertainty or want of finality, leaves a door open for further litigation on the same issues between the same parties can and should be avoided”.

From the guidance in the **Mike Hamusonde Mweemba**¹¹ case, it is my considered view that taking the route proposed by the parties would go against having a clean break hence contrary to the principle of finality in litigation. Meanwhile, the parties were divorced and have moved on with their lives especially that the respondent has since remarried. For the above stated reasons, I have opted to depart from the proposals of the parties.

Therefore, I order that the shares held in their individual names, savings and fixed deposits, gratuity, pension and NAPSA payments in their respective names belong **solely** to each one of them with none partaking from the other.

Similarly, the obligations of each party in loans, mortgage or otherwise shall be borne by the individual responsible respectively.

I now turn to sharing of household goods which covers vehicles and other household properties the couple acquired during the subsistence of their marriage. In the case of **Annie Scott v Oliver Scott**⁵ the Supreme Court held, *inter alia*, that:

“(4) Household goods provided they were bought during the subsistence of the marriage by either of the parties are to be shared equally.

Further, in the case of **Fabian Ponde v. Charity Bwalya**³ it was held, *inter alia*, that:

4. There should be no family property which is too small for the court to share between a former husband and wife after divorce....

I propose to begin with vehicles the parties acquired during the subsistence of their marriage. The evidence on record is that during the subsistence of their marriage, the parties acquired the following vehicles and equipment:

- Mitsubishi canter BAD 6741
- Mitsubishi Canter off cut chassis
- Massey Ferguson Tractor ALJ 758610
- Man Truck ABU 2992ZM
- Scania Truck AB V2815ZM
- Leyland Daf Truck ABL 1055
- Daf Truck spares
- Mitsubishi Colt ACT 5903
- Tractor Disc Harrow
- Welding machine
- Egg incubator
- Genset
- Gym training bench

From the evidence on record, I have looked at what each party proposed to be given and what the other should be awarded. Each of the parties have proposed to be given the same things, therefore, it is practically impossible to go by their proposals. Therefore, I will use my discretion to share the vehicles to the parties. Further, there is evidence that the petitioner already took the Mitsubishi Canter, registration BAD 6741 and the Massey Ferguson Tractor registration ALJ 7586 which she bought and are in her name. My view is that what is already taken away by the petitioner would be awarded to her and consideration would be made for the respondent of the items that have remained with him.

Therefore, I award the petitioner the Mitsubishi Canter - BAD 6741 with the Mitsubishi Canter off cut Chassis; Massey Ferguson Tractor - ALJ 7586 with Tractor Disc Harrow; Man Truck ABU 2992ZM; Genset and Egg Incubator.

To the respondent I award the following: Scania Truck AB V2815ZM; Leyland DAF Truck ABL 1055, Tipper Truck, Mitsubishi Colt Double Cab ACT 5903; Welding Machine and Gym training bench.

I now move to household property, household fittings, implements, seeds and animals. Evidence on record suggests that the following have already been collected and being used by the petitioner and therefore, I have awarded the same to her. These are:

- 1 brown 3-piece sofa set
- Small black bedside table
- 1 medium sized bed
- 1 four plate cooker and 2 plate gas stove
- 1 large deep freezer
- 1 washing machine
- 1 brown carpet
- 1 black coffee table and 1 beige coffee table
- Kitchenware, old gate and tractor trailer

To this list, I add the following property to the petitioner:

- Roofing materials
- 5 x 25 kg of Soya Bean seed
- 12,652 Hass Avocado Plants
- 8 Cattle
- Household fittings (bathtubs and toilets)
- Upright deep freezer
- 1 small fridge
- 1 large flowerpot
- 5 medium flower pots
- 1 Tube TV, Decoder and dish
- 1 dining table with 4 chairs

- 2 small office cabinets
- 1 large mirror
- 1 music machine
- 1 brown room divider
- 1 mukwa door
- Assortment of curtains and curtain nets
- 10 Goats


To the respondent, I award the following property:

- White double wardrobe
- Medium deep freezer
- 1 big upright fridge
- 5 x 25Kgs of soya Bean seed
- 12,652 Hass Avocado Plants
- 7 Cattle
- 1 plasma TV, decoder and dish
- 1 big black pedestal upright fan
- 1 orthopedic queen size bed
- 1 double bed (being used by the first son)
- 1 medium sized bed (being used by the second son)
- 1 beige side coffee table
- 1 brown dining table with 5 chairs
- 1 maroon and beige carpet
- 1 dark brown carpet
- Farm implements (hoes, lashers, 1 sprayer, drip irrigation pipes and hose pipes)
- 1 bookshelf
- 1 black 3 piece sofa set
- 1 maroon room divider
- 1 flash wooden door

- 1 water grill
- 11 Goats
- 1 four plate stove
- 3 large 70 x 40m decorative mirrors
- 1 dining table with 2 chairs
- 1 upright square laundry table
- Electric blender
- 1 music machine
- 2 office chest of drawers

Having shared the family property herein, parties are ordered to comply forthwith. Each party to bear their own costs. Leave to appeal is granted.

Delivered this 29th June 2023


R. C. MBAMBI
Registrar

