SACRIFICE CEMENT
versus
BONIFACE CHIDUKU
And
THE HOUSING DIRECTOR KWEKWE CITY COUNCIL N.O
And
PRECIOUS CHIKAVAZA
And
SIMBARASHE NDAMU
And
THE TRUSTEES FOR THE TIME BEING OF THE RIVER

HIGH COURT OF ZIMBABWE
ZISENGWE J
MASVINGO, 21 May & 12 June 2024

Urgent chamber application

E. Matsanura, for the applicant

PM Sagwete and with her M. Damba, for the first respondent,

A. Chatsama for fifth respondent

No appearance, for the second, third and fourth respondents

ZISENGWE J: This is an application brought on an urgent basis for what can be loosely termed as an "anti-dissipation" interdict. The applicant seeks to have her estranged husband (the first respondent) barred from disposing of any of the assets acquired by the two of them during the currency of their union pending the outcome of an action which she has since mounted for an equitable sharing of those assets. This latter claim was brought under case number HCMSF 80/24.

It is the applicant's position that her 22-year-old customary law union with the first respondent collapsed and since been formally terminated. She avers in this regard that all the traditional rites confirming and symbolising its demise, consisting chiefly of the handover of the divorce token (gupuro) have been conducted. She therefore claims that should the present application not be heard and granted on an urgent basis her claim under HCMSF 80/24 would be rendered nugatory because by which time it is heard the first respondent is likely to have alienated those assets to her detriment. She avers that she is entitled to equitable share of that property on account of her long customary law union to the first respondent coupled with her contribution thereto from her pursuits as a businesswoman. She claims that the fact that the bulk of the properties are registered in the first respondent's name does not detract from her contributions, both direct and indirect, towards the acquisition of those assets and should not in the least diminish her entitlement to a fair share thereto.

It is common cause that this present application is in fact the applicant's third bite of the cherry, so to speak, at an interim interdict the first two attempts both coming as they did within the past three weeks or so, having been withdrawn. In short, the withdrawals were occasioned by the defectiveness of the respective summons and declaration upon which the applications were founded.

Part of the relief sought relates to three immovable properties, namely stand No. 2721 Japonika Southwood, Masasa, Kwekwe ("the japonika property") which the applicant refers to as the matrimonial home, Diggers night club built on stand No. 19628//15 Mbizo, Kwekwe, ("the night club") and Stand No. 158111/15 Mbizo, Kwekwe ("the Mbizo house"). The rest of the assets which the applicant seeks to be placed under the interim interdict consist of six motor vehicles, a boat, a private limited company (presumably the applicant has in mind shares in that company) gym equipment and various items of household and office furniture. The applicant's position in respect of each of the three immovable properties may be summarised as follows.

The Japonika property

The applicant avers that the first respondent purported to sell this property to a trust (the fifth respondent) founded by his blood sister, one Memory Chaurura. According to her this sale was nothing more than a façade or smokescreen (although she did not say so in as many words) designedly to frustrate her claim for an equitable share thereto. All she seeks in this respect is an

order temporarily barring the local authority i.e., Kwekwe City Council, through its Housing Director (the second respondent) from proceeding with any intended cession of that property to the fifth respondent. She has since placed the second respondent on notice in this regard.

She also seeks as order barring the fifth respondent which she accuses of working in cahoots with the first respondent from evicting her from the Japonika property. She asserts that the first respondent consented to an application launched by the fifth respondent for her (and her children's) eviction from that property. The consent, according to her was part of the grand scheme (contrived by the first and fifth respondents) to divest her of her right or claim to that property.

She also narrated in her founding affidavit how the first respondent contradicted himself in so far as the ownership of this property is concerned. She avers that in one breath the first respondent claims to be the owner of this property yet in the next breath avers that he has since sold the property to the fifth respondent. According to her, this is clear evidence that the purported sale of the Japonika property was nothing more than a ruse meant to mislead the court and to confound her.

The Night club and the Mbizo house

Here, the situation is somewhat the reverse of that which obtains in respect of the Japonika property. The applicant avers that she has since learnt from the records of the second respondent that these two properties are still registered on the names of their original owners from who she and the first respondent purchased them, namely the third and fourth respondents respectively.

She therefore seeks an order barring the third and fourth respondents from selling or otherwise alienating those two properties to third parties. The wisdom being that since transfer or cession has not yet been effected, there is nothing that precludes the third and fourth respondents from selling or alienating those properties to such third parties.

The applicant avers that she stands to suffer irreparable harm if the application is not granted because first respondent will dispute all the asserts leaving her clutching thin air, so to speak. She also asserts that the balance of convenience favours preserving the status quo pending the outcome in the main matter under HCMSF 80/24. Finally claims that she has no other satisfactory remedy which can serve the same purpose.

Ultimately the applicant contends that not only is the matter urgent and must therefore be dealt with as such but also that she has adequately satisfied the requirements for the granting of an interim order in the following terms:

> **PENDING THE RETURN DATE** Applicant is granted the following provisional relief:
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> **1.** Pending the finalization of the matter under **HCMSF 80/24** 1st, 2nd and 5th respondents, without a court order, be and are hereby interdicted from ceding, transferring and or signing any documents to effect cession of **stand number 2721 Japonica Southwood Masasa, Kwekwe** into the name of the 5th respondent and or any third party or reselling the property to any third party.
> **2.** Pending the finalization of the matter under **HCMSF 80/24**, 1st respondent, without a court order, be and is hereby ordered and directed not to howsoever alienate or dispose of any of the movable and immovable matrimonial properties subjected to sharing and distribution under **HCMSF 80/24**, in particular:
> *a. Stand Number 16853/10Mbizo, Kwekwe,*
> *b. Nibex Hardware, stand Number 3001 Amaveni, Kwekwe,*
> *c. Nibex Ventures Private Limited,*
> *d. House Number 16836/10 Extension, Mbizo, Kwekwe*
> *e. UD Lorry Registration number ACZ 5992*
> *f. Opel Corsa Registration number AGI 5385*
> *g. Jaguar registration Number XF AEF 8630.*
> *h. White Lorry registration Number ACL 9808*
> *i. Mazda Alexa Registration Number AES 4132*
> *j. Isuzu Double cab Registration Number ADW 9410*
> *k. Gym equipment (bicycle grey in colour),*
> *l. Gym equipment (treadmill white in colour),*
> *m. Bedroom suite black and white in colour,*
> *n. A Boat white in colour, blue label "Matty",*
> *o. Black Leather Sofas,*
> *p. 3 Beds; 2 double beds, 1 King size bed,*
> *q. 1 Grey Upright Refrigerator,*
> *r. 2 Television sets; 1 LG television set, 1 Plasma television set,*
> *s. Dinning suite with brown chairs, 6 piece,*
> *t. Office furniture; desk, chair and cabinet,*
> *u. Kitchen utensils.*
>
> **3.** Pending the finalization of the matter under HCMSF 80/24, 3rd respondent, without a court order, be and is hereby interdicted from reselling, ceding, transferring and or signing any documents to effect cession of **DIGGERS NIGHT CLUB**, built on stand number 19628/15 Mbizo, Kwekwe into the name of any third party.
> **4.** Pending the finalization of the matter under HCMSF 80/24, 4th respondent, without a court order, be and is hereby interdicted from reselling, ceding, transferring and or

> signing any documents to effect cession of stand number 15811/15 Mbizo, Kwekwe into the name of any third party.
> **5.** 5th respondent be and is hereby interdicted from evicting applicant and all those claiming occupation through her from stand number 2721 Japonica Southwood Masasa, Kwekwe pending finalization of the matter under HCMSF 80/24.

The second, third and fourth respondents did not file any opposing papers but the first and fifth respondents did. Apart from resisting the application on the merits, they both raised certain preliminary points which in their view are each independently potentially dispositive of the matter without going to the merits of the application. The points in limine raised by the first respondent were the following:

a) Lack of urgency

Under this rubric, the first respondent raised two complaints against the application being heard on an urgent basis. First it was averred that the applicant had not established a *prima facie* right *vis-a-vis* the property entitling her to the relief sought, second that the applicant failed to act when the need to do arose thereby forfeiting any claim at urgency. Second, it was submitted that there was an unexplained day between the withdrawal of the second urgent application and the filing of the current one.

b) Non-disclosure of material facts

Here, the gravamen of the complaint was that the applicant had failed to take the court into her trust by disclosing her earlier ill-fated applications of a similar nature

c) Defective certificate of urgency

In this respect it was averred by the first respondent that the certificate of urgency fails on two material respects namely its failure to disclose when the need to act arose and secondly its failure to disclose the two abortive applications referred to earlier.

d) Failure to disclose a cause of action

The basis of this preliminary point is that the summons and declaration upon which this present application is predicated is defective for want of disclosure of cause of action cognisable in terms of the law. It is averred in this regard that a claim for sharing of property does not amount to cause of action.

e) Incompetence of relief sought

The respondent avers in this respect that the final order sought is the same as the interim relief sought rendering of the application defective

f) The existence of material disputes of fact

It was averred by the first respondent that the granting of a divorce token was denied as evidenced by the failure to disclose the amount tendered as gupuro.

The fifth respondent initially raised two preliminary points, the first relating to the alleged lack of urgency and the other to *lis pendens*. In the latter regard it was averred that the dispute relating to the eviction of the applicant from the Japonika property is pending before the magistrate court sitting at Kwekwe hence the present application should be stayed pending the outcome of that matter. However, the fifth respondent abandoned both points in *limine* during oral submissions in court.

The applicant resisted all the points in *limine* and urged the court to dismiss the same. Solely for purposes of brevity I shall not endeavour to articulate the applicant's attitude in respect of each of the points in *limine*. Rather I shall incorporate her averments during the attempt to resolve each.

Perhaps in anticipation of receiving criticism for the 10 day delay between her withdrawal of the second urgent application and the filing of the present one the applicant tendered a pre-emptive explanation. While conceding to the delay, she urged to view the circumstances in their totality with particular regard to the chronology of events.

Whether the matter is urgent.

The oft-cited passage from the case of *Kuvarega v Registrar General* 1988 (1) ZLR 188 at 193 F-G is apposite, thus:

> "*What constitutes urgency is not the imminent arrival of the day of reckoning: a matter is urgent if at the time the need to act arises the matter cannot wait. Urgency which stems from a deliberate or careless abstention from action until the deadline draws near is not the type of urgency contemplated by the rules"*

Similarly, in *Kuziva Tigere* v *Police Service Commission* HH 439/15 MATHONSI J (as he then was) had this to say in this regard:

> *"Self-created urgency, that urgency which stems from deliberate inaction until the day of reckoning is nigh, is not the urgency contemplated by the rules of the court. A party that*

refrains from taking action when the need to do so arises only to dash to the court at the eleventh hour as if the subject matter has just arisen will be stopped dead on the tracks because the court will not entertain a calamity of the litigant's own making"

In *Bleat Enterprise Pvt Ltd* v *B.W.B Chikura* HB-95-21 KABASA J weighed in on the subject and reiterated that the applicant by his conduct must act in a way that evinces urgency. She had this to say:

"Urgency begets urgency. Why would the court drop everything to hear your matter and allow you to jump the queue if you did not exhibit urgency from the outset?"

Finally, in *Gwarada* v *Johnson & Others* 2009 (2) ZLR 159 (H) it was held that:

"A matter does not assume urgency because a litigant has plans, the fulfilment of which requires an immediate solution. Urgency in my view, arises when an act occurs which requires contemporaneous resolution absence of which may cause extreme prejudice to the applicant"

In the present matter I do not get the impression that the applicant forfeited her claim at urgency on account of the two ill-fated initial applications or from the roughly ten-day period between withdrawal of the application under HCMSF 61/24 and the filing of the present one.

Whether or not the applicant acted with the requisite promptness or was slow on her feet is a matter for the discretion of the court properly exercised, see *Econet Wireless (Pvt) Ltd* v *Trusctco Mobile (proprietary)Ltd* SC 41-13where GARWE JA (as he then was) had this to say:

"It is clear that in terms of Rules 244 and 246 of the High Court rules the decision whether to hear an applicant on the basis of urgency is that of the judge. The decision is one therefore that involves the exercise of direction."

In *casu* I am satisfied from a reading of the applicant's papers in general and a perusal of the reasons advance for the apparent delay that she was not neither lackadaisical nor dilatory in her attitude.

The fact that she has relentlessly pursued an order temporarily barring the first respondent from disposing the assets in question despite the two set-backs referred earlier bolsters rather than diminish her claim towards urgency. Her tirelessness in that quest cannot by any stretch of the

imagination be construed as a "deliberate or careless abstention from action until the deadline draws near."

Applications for "anti-dissipation" interdicts are by their very nature urgent. Treating them otherwise would amount to unwittingly aiding and abetting the disposal of the assets subject to the dispute. It would afford the alleged offending party a window of opportunity to swiftly spirit away or otherwise dispose of those assets before the substantive issues surrounding them are determined.

Apprehension of such alienation of the property is heightened in matrimonial claims where the assets are registered on the name of the alleged offending party.

Whether or not cause of action and prima facie right exists

I have taken the liberty to deal with these two under one head as they are related. The question of whether or not the applicant has demonstrated prima facie right entitling her to be heard on an urgent basis needs not detain anyone. A person in an unregistered customary law union is entitled upon its dissolution to an equitable share of the property acquired during its currency. This claim is usually anchored under the general law principles applicable upon the dissolution of a tacit universal partnership, see *Mtuda v Ndudzo* 2000(1) ZLR 710 & *Marange v Chiroodza* 2002(2) ZLR 171. *Feremba* v *Matika* 2007 (1) 337, *Lavreil Elizabeth Mbaraidzo v Yosia Jose* HH 40-18. It may also be based under a claim for unjust enrichment. See *Jengwa v Jengwa* 1999 (2) 121 (H). It may be claimable in terms of joint ownership of the property. The situation as it relates to the distribution of assets acquired by parties to an unregistered customary law union was summarised by MAKARAU JP (as she then was) as follows:

> "However, it is the agreed position at law that whatever legal vehicle is used to try and achieve equity between the parties, some legal principle must be pleaded. The union itself is not a cause of action at common law."

More recently with the promulgation of the new Marriages Act *[Chapter 17]* it is not uncommon for such claims to be predicated in terms of section 41 which relates to civil partnership. A relationship which meets all criteria set out in section 41 the Marriages Act, qualifies upon its dissolution is to treated for purposes of distribution of assets, under ss7-11 of the Matrimonial Causes Act *[Chapter 5:13]*. In a nutshell therefore, whether or not the parties customary law union qualifies as an as civil partnerships (and therefore provisions of the Matrimonial Causes Act apply) or the distribution of their assets is to be determined on the basis

of one or other of the aforementioned general law principles is for the court to determine under HCMSF 80/24. Suffice it to say the applicant specifically pleaded the former.

After all, what the applicant needs to show at this stage on the proceedings is the existence of a *prima facie* right. This, in my view, she has amply demonstrated by virtue not only of the duration of her unregistered Customary law union to the first respondent, but also by virtue of her direct and indirect contribution towards the acquisition of the assets in question. These two points in *limine* are hereby dismissed for lack of merit.

The certificate of urgency

The attack on the certificate urgency is hardly warranted. The rather lengthy certificate of urgency by Herbert Takudzwa Mawena attempts to set forth (*albeit* in part) reasons why he held the belief that the matter was urgent. The alleged omissions complained of relating as they do the previous abortive urgent chamber applications were, contrary to the first respondents averments referred to in paragraphs 14, 15, 42 and 43 of the applicants' founding affidavit. Similarly, paragraphs 2.4 and 2.8 of the certificate of urgency relate to the urgent chamber applications which were withdrawn. In any event I do not believe any such alleged omissions render the application fatally defective. In *Telecel Zimbabwe (Pvt) Ltd* v *POTRAZ & 4 Ors* HH-446-15 MATHONZI J. (as he then was), was prepared to condone upon application, failure to observe strict compliance with the then rule 241 of the High Court Rules 1971 where the certificate of urgency had omitted to contain a summary of the grounds on which the application was brought. He stated as follows;

> "I take the view that the rules of court are there to assist the court in the discharge of its day to day function of dispensing justice to litigants. They are certainly are not designated to impede the attainment of justice. Where there has been a substantial compliance with the rules and no prejudice is likely to be sustained by any party to the proceedings, the court should condone any minor infraction of the rules. In my view to insist on the grounds for the application being incorporated in Form 29B when they are set out in abundance in the body of the application, is to worry more about form at the expense of the substance. Accordingly, by virtue of the power reposed to me by r 4C of the High Court Rules, I condone the omission."

I hold the view that whatever shortcomings that may afflict the certificate of urgency (which I do not find) there was a commendable effort on the part of the legal practitioner in question to set out the grounds upon which the court should treat the matter as urgent. There was substantial compliance with what is required in that regard.

Ultimately on urgency, therefore I find that not only is the matter inherently urgent but also that the applicant evidently treated it as such. She has managed to make a good case for having the matter treated as urgent and accordingly this point in *limine* is hereby dismissed.

Non-disclosure of material facts

In this regard the first respondent contends that the applicant failed to divulge that she had two previous abortive attempts at the same relief. However, a perusal of paragraphs 14, 15, 42 and 43 of the applicant's founding affidavit reveals that as a matter of fact she did make the relevant disclosure. That point in limine is without merit and is hereby dismissed.

Competence of the relief sought

The first respondent's gripe with the wording of the interim relief sought vis-à-vis the final order. In his view that it is not competent for the court on the return date to determine what has already been decided by virtue of the interim order. Put in context therefore, once the interim order states that the property in question should not be alienated pending the outcome in HCMSF 80/24, then there can be no question of the confirmation or discharge of that order.

If what is sought is a provisional order pending the return date, the provisional order the provisional order must relate to the return date. It cannot relate to the main matter (HCMSF 80/24), for to do so would render the return date nugatory. In effect the interim relief would be the same as final order which undesirable see *Kuvarega* v *Registrar General* (*supra*) where the following was stated:

> "The practice of seeking interim relief which is exactly the same as the substantive relief sued for, and which has the same effect, defeats the whole object of interim protection. In effect a litigant who seeks relief in this manner obtains final relief without proving his case. That is so because interim relief is normally granted on the mere showing of a prima facie case. If the interim relief is identical to the main relief and has the same substantive effect, it means the applicant is granted the main relief on proof merely of a prima facie case. This to my mind is undesirable where, as here, the applicant will have no interest on the outcome of the case on the return day."

Similarly, in *Econet Wireless (Pvt) Ltd* v *Trustco Mobile (Proprietary) Ltd & Anor* (*supra*) the Supreme Court had this to say in this regard:

> "It is correct that in general terms a court should not grant interim which is similar to or has the same effect as the final relief prayed for. The reason for this is obvious. Interim relief should be confined to interim measures necessary to protect any rights that stand to be confirmed or discharged, as the case may be, on the return date. Indeed, in *Kuvarega* v

> *Registrar General & Anor* 1998 (1) ZLR 188 (H), the High Court slammed the tendency by some litigants to seek the same relief both as a provisional and final order."

Equally relevant in my view is the fact that once the interim order is made subject to the outcome in HCMSF 80/24, it effectively, excludes the third, fourth and fifth respondents who are not party thereto, yet they have a stake in the proceedings. These latter three are not party to the proceedings under HCMSF 80/24. They would have no opportunity to contest what is sought therein, potentially to their prejudice.

The proper manner of couching the interim order on the circumstances is to make it subject to confirmation on the return day. What the court will then be called upon to determine on that occasion *inter alia* is whether or not each of the properties in question qualifies to form part of the property subject to distribution.

However, subsection 9 of rule 60 of the High court rules permits a judge to vary the terms of a provisional order sought, it reads:

> "where in an application for a provisional order the Judge is satisfied that the papers establish a *prima facie* case he or she shall grant a provisional order either in terms of the draft filed *or as varied*." (italics for emphasis)

Material disputes of fact

The argument here was that the question of whether or not the unregistered customary law union has been terminated remains unresolved. As far as he is concerned the union still subsists. To buttress his point, he questions why the date of the handover of the divorce token was not divulged by the applicant.

A material dispute of fact arises where the respondent denies material allegations made by the applicant produces positive evidence to the contrary; *Room Hire Co. v Jeppe Street Mansions 1949 (3) SA 1155, Ismail & Anor v Durban City Council 1973 (2) SA 362 N, Cosmas Chiangwa v David Katerere & Ors SC61/21*.

The general approach however is to take a robust common-sense approach and decide the matter on the available evidence; *Muzanenhamo v Officer in Charge CID Law Order & Ors* 2013 (2) ZLR 604 & *Soffiantini v Mould* 1956 (4) SA 150 (E), *Zimbabwe Bonded Fibreglass v Peech* 1987 (2) ZLR 338 (SC), otherwise the efficacy of application proceedings would be eroded by the mere raising of illusory disputes of fact.

In the context of an application of this nature where seeking as it does an interim interdict restraining the respondents from disposing of the assets pending the return date, I do not find it necessary to establish with any degree of certainty that the union has been terminated. In any event it is trite that where there are material disputes of fact, the court

should strive to take a robust and common-sense approach and decide the matters on affidavit evidence. It is for this reason that I am inclined to, as I now do, dismiss this particular point in *limine*.

All the preliminary points raised by the first respondent having thus fallen by the wayside, I shall now proceed to address the substantive merits of the application

The requirements for the granting of an interim interdict are well-known, they are:

(a) A right, though prima facie established is open to doubt

(b) A well-grounded apprehension of irreparable injury

(c) The absence of any other remedy

(d) The balance of convenience favours the applicant

See *ZESA Staff Pension fund* v *Clifford Mashambadzi* SC 57-02, *Setlogelo* v *Setlogelo* 1914 AD 221, *Erikson Motors (Welkom)Ltd* v *Protea Motors & Anor* 1973 (3) SA 685 (A) at 691.

Prima facie right

In respect of the Japonika property. To the extent that the applicant alleges that the sale of the Japonika property to the fifth respondent was a sham designedly to prejudice her, the applicant did manage to establish a *prima facie* right. I say this mindful of the fact that marriages in Zimbabwe are out of community of property and a spouse can deal with their property as they so wish. See *Rachel Chileshe Chiparaushe (nee Chimfwembe* v *Langton Simwemba Chipraushe* HH-312-17 where the court said the following:

"It is trite that an owner of a property has the right to dispose of their property in a manner they desire. In cases of husband and wife relationships the same has been said. In *Isaac Sithole* v *Lucia Sithole* HH 674/14 at p 9 of the cyclostyled judgment I reiterated that:

"It is trite law that a wife cannot bar her husband from selling assets registered in his name more so when no divorce action requiring the distribution of those assets is instituted. *However, court can intervene where a sale is not genuine but is meant to defeat the wife's cause."* (My italicization for emphasis)

The court further referred to *Muswere* v *Makanza* 2004 (2) ZLR 262, where MAKARAU J (as she then was) had occasion to deal with a situation where a husband had disposed of the house that the wife believed she had a share in. The wife had argued that the husband should not have disposed it without her consent. The learned judge at p 266 D-E stated that:

"The position in our law is therefore that a wife cannot even stop her husband from selling the matrimonial home or any other immovable property registered in his sole name but forming the joint

> matrimonial estate: see Muzanenhamo's case *supra*. *There must be some evidence that, in disposing the property, the husband is disposing it at under value and to a scoundrel*. …. Mere knowledge that the seller of the property is a married man who does not have the consent of the wife to dispose of the property is not enough." (Italics for emphasis)

What is clear from the authorities is that whereas a married person may not stop his/her spouse from disposing of any of the assets owned by him or her, in appropriate circumstances, especially where the contemplated disposal is designed to defeat pending litigation between them, the court may intervene to interdict the intended disposal.

In the context of the present matter therefore, the applicant in my view managed to establish a *prima facie* right (though open to doubt) that she has a stake in the property in question. Whether the sale of that property was a sham or was *bona fide* may be up for determination on the return day. So too will questions relating to when the sale took place and whether the applicant gave her consent thereto. Suffice it however to say that by virtue of her customary law union to the first respondent the applicant managed to lay a basis for the existence of a *prima facie* right.

The same applies to the rest of properties listed by the applicant the draft order. Interestingly, the third and fourth respondents in respect of whom the night club and the Mbizo house apply did not oppose the application.

A well-grounded apprehension of irreparable harm.

The applicant's apprehension stems primarily from her version of the circumstances under which the Japonika property was purportedly disposed of. She avers in this regard that not only did the first respondent purport to clandestinely sell this property, leaving her and their children virtually homeless but also that he did so in a manner to disguise that it was in fact a fraud.

She therefore asserts that should the first respondent not be barred from disposing of the other assets by the time the main matter made HCMSCR 80/24 is heard there will be nothing left to share.

Although the first respondent tenaciously strove to refute these allegations, the fact that there have been court battles waged pitting the three protagonists (the applicant, the first respondent and the fifth respondent) coupled with the fact that at approximately the same time the applicant and first respondent were undoubtedly caught up in an acrimonious feud leading to their

estrangement tends to lend credence to applicant's apprehension of irreparable harm. Irreparable harm refers to the nature of the harm that would be potentially suffered rather than its magnitude.

Absence of any other remedy

This requirement has been interpreted to mean absence of "any other remedy by which applicant can be protected with the same result". The assertion by the first respondent that at this stage the applicant has an alternative remedy in the form of a claim for damages cannot in my view be sustained. The division of assets consequent to divorce or dissolution of customary law union or a civil partnership is no simple matter. It is a complex involved exercise. Once the property in question is gone, some of which may be of sentimental value, it would be cold comfort that a party so prejudiced can always seek for damages. In any event the process of obtaining damages is no stroll in the park. I hold the view that the

Balance of convenience

I hold the view that the balance of convenience favours freezing the status quo until the return date on which occasion the provisional order can either be discharged or confirmed

Ultimately therefore the application for a provisional order succeeds as follows:

PENDING THE RETURN DAY, The Applicant is granted the following provisional relief:

1. The first, second and fifth respondents are hereby interdicted from ceding, transferring and or signing any documents to effect cession of **stand number 2721 Japonica Southwood Masasa, Kwekwe** into the name of the fifth respondent and or any third party or reselling the property to any third party.

2. The first respondent is hereby ordered and directed not to howsoever alienate or dispose of any of the following movable and immovable properties:

a. Stand Number 16853/10Mbizo, Kwekwe,
b. Nibex Hardware, stand Number 3001 Amaveni, Kwekwe,
c. Nibex Ventures Private Limited,
d. House Number 16836/10 Extension, Mbizo, Kwekwe
e. UD Lorry Registration number ACZ 5992
f. Opel Corsa Registration number AGI 5385
g. Jaguar registration Number XF AEF 8630.
h. White Lorry registration Number ACL 9808
i. Mazda Alexa Registration Number AES 4132
j. Isuzu Double cab Registration Number ADW 9410
k. Gym equipment (bicycle grey in colour),

l. Gym equipment (treadmill white in colour),
m. Bedroom suite black and white in colour,
n. A Boat white in colour, blue label "Matty",
o. Black Leather Sofas,
p. 3 Beds; 2 double beds, 1 King size bed,
q. 1 Grey Upright Refrigerator,
r. 2 Television sets; 1 LG television set, 1 Plasma television set,
s. Dinning suite with brown chairs, 6 piece,
t. Office furniture; desk, chair and cabinet,
u. Kitchen utensils.

3. The third respondent, be and is hereby interdicted from reselling, ceding, transferring and or signing any documents to effect cession of **DIGGERS NIGHT CLUB**, built on stand number 19628/15 Mbizo, Kwekwe into the name of any third party.

4. The fourth respondent, be and is hereby interdicted from reselling, ceding, transferring and or signing any documents to effect cession of stand number 15811/15 Mbizo, Kwekwe into the name of any third party.

5. The fifth respondent be and is hereby interdicted from evicting applicant and all those claiming occupation through her from stand number 2721 Japonica Southwood Masasa, Kwekwe.

Bonongwe & Company, applicant's legal practitioners.

Masawi Partners, 1st respondent's legal practitioners

Chatsama & Partners, 5th respondents' legal practitioners