



NEWSLETTER 2nd edition

Dear Reader!
 Welcome to our latest NNLaw Newsletter, the second this year. If you are reading this, you would have probably seen the previous newsletter, if not sign up on our website. Each issue brings a variety of issues to educate and inform various groups of society on the developments in the law. Hope you will enjoy reading it, if you have any feedback feel free to leave a comment on our website.



Sonia Fashi

Why are contracts of employment important?

Some businesses, companies, firms or organizations do not make use of contracts of employment. These contracts are of fundamental significance no matter the size of an organization. This newsletter serves to highlight on the importance of employment contracts. Any contractual relationship should be clarified because failure to do so may cause problems sooner or later.

What is an employment contract?

It is a legally binding agreement between parties, normally the employer and the employee with intent to safeguard the interests of both parties by giving security and protection in the carrying out of their prescribed duties. It is a contract which defines the rights and responsibilities between two parties (the employer and the employee).

Contracts of employment just like any other contract must be reduced into writing since oral agreements are difficult to prove. Written agreements clarify the scope of employment and act as evidence between the parties when disputes in relation to the employment relationship arise. An employment contract protects an employee's rights as well as the employer's rights. Employees should always take time to review and understand employment

contracts before signing, because once a signature is appended on such a document, it is taken as binding between the parties as it will be alluded that both are in agreement with the terms, conditions and contents of such a document.

The employment contract among other things must specify terms and conditions, the scope of employment, names and addresses of the employer and the employee, duration of the contract, terms of employment, as well as other benefits. An employment contract must specify whether a person is hired as an agent, independent contractor or employee since these relationships operate differently even though they all render services to another for a consideration. Not all workers are termed employees, some are independent contractors or even volunteers. Bowstead on Agency stated that, an agent is bound to act in the manner of the principal whereas an independent contractor merely undertakes to perform certain specified work or produce a certain specified result, the manner and means of performance being left to his discretion. Clarifying an employment contract by reducing it to writing makes the settling of disputes that arise at the work place in relation to terms of employment easy.

Can a wife interfere with immovable property registered in the husband's name?

FACT: Being married to someone doesn't mean you own everything that they have.

What is the legal relationship of a wife to property registered in the name of her husband only?

Muswere v Makanza HH-16-05, real rights v personal rights, this is one of those cases that break women.

Most women think that having a civil marriage guarantees them the right to co-own matrimonial property. Yes in some instances it does. What if such property is registered in the name of the husband only despite the fact that it is matrimonial property belonging to both spouses. There are loopholes which if dug out can have detrimental effects to women and matrimonial property. Well I can safely say that a civil marriage is not a bread ticket for life. Women whose names do not appear on

the title deeds of the properties bought during marriage are at a disadvantage.

This discussion seeks to unpack the position of the law by perusing through decided cases on the issue of implications of property registered in the husband's name only. In this case the court pointed that, the law relating to the rights of a wife to property registered in her husband's sole name reveals a yawning gap between the law of property and the common law of husband and wife with the former failing to recognise the rights that the latter gives to spouses". Under our law of property, the right of ownership over property of whatever nature confers the most complete and comprehensive control one can have over property. It is a cornerstone of the law of property that ownership of land is proved by way of

registration of title. Thus whoever has his/her name endorsed on the deed conveying title is at law recognised as the owner of the land with the most complete and comprehensive control over that land.

In marriages couples usually acquire property jointly and such property is registered in the sole name of the husband when women are blinded by love and due to the patriarchal nature of our societies but sometimes people tend to ignore what may transpire tomorrow, there is not always till death do us apart. This case expounded that while family law and the law of inheritance recognize the existence of a joint matrimonial estate, brought into existence by the fact of the marriage and whose distribution depends on the parties contributions both direct and indirect, the law of property does not. In the case of

NATIONAL PROVINCIAL BANK v AINSWORTH [1965] 2 ALL ER 472, it was held that, where property is registered in the husband's name, then the wife's status gives her personal rights against her husband and that she is in the house not because of any contract or licence but by virtue of her marriage. In a recent case of **MADZARA V STANBIC Bank Zimbabwe Ltd & Others. HH-546-15**, in which matrimonial property was encumbered or burdened with a bond without her consent, the applicant sought solace that the common law position that personal rights more often than not those of a wife, against a husband's real rights are not protected at all be reversed. In this case Mr Biti advocated for legislative reform so that women be protected from such instances. He expounded that, "where the law

is in place that could be harnessed to prevent the problem in question and where despite this reality, action is not taken, this has everything to do with changing attitudes that prevent women from being assertive. It is about giving meaning to "empowerment" which eventuates when women who do not only know their rights but also take steps to assert them actively to change their reality...when a problem emanates from the context and substance of the law, the strategy is generally law reform".

The position in our law as it stands is therefore that a wife cannot even stop her husband from selling or having such matrimonial property mortgaged without her consent or any other immovable property registered in

his sole name but forming the joint matrimonial estate. Such wife only has personal rights despite having contributed directly or indirectly in acquiring the property. Real rights vest in the husband who therefore is at law taken to be the owner of the property by virtue of the title deeds bearing his name and can therefore dispose of such property if he deems it fit. So to women, having a civil marriage is not enough, there is need to go an extra mile and have your name appear on the title deeds as an extra safeguard to your interests and rights in the matrimonial property to cab future disputes and disappointments. Do not fail to take action to co-own property with your names appearing on title deeds because of cultural constraints.

Ways of ensuring that debts are paid back be it by companies, organizations or individuals. Security in borrowing.

One of the pitfalls being made by most companies, banks or organizations is that they are dishing out huge sums of money without requiring security. When extending credit to anyone (usually the debtor) be it from the bank, company or any organization, need must always arise to be given security from such debtor. There is need to back up any amount advanced with some form of collateral (that is security pledged for any amount borrowed). Types of security that may be given can be in the form of a mortgage, notarial bonds, pledge, lien or in the form of a surety among others. I will highlight a few types of security that can be given to secure or guarantee the repayment of a debt.

Mortgage-this is property given by the debtor to a creditor as security for the debt advanced on condition that it shall be returned on payment of the debt, if the debtor fails to pay, such property can be sold by an order from the court and the proceeds from the sale will be used to repay any

advances made to them.

Notarial Bond- this is a type of security advanced or given to the creditor in relation to specific movable property of the debtor. In the event that the debtor fails to pay, you can sell the property by court order to recover your debt. The difference with this kind of security from a pledge is that the movable property remains in possession of the debtor (the property is not delivered to the creditor to hold as security for the payment of a debt).

Pledge-this refers to property that is pledged or given or delivered to the creditor as security for any debt advanced. A pledge in simple terms is something that is delivered to the creditor to hold as security for the payment of a debt. Pledged property will guarantee payment of a debt. This property is given to the creditor to hold as security. In the event that the debtor fails to pay the principal debt, the court may give an order to the effect that such property be sold and

the proceeds will settle the debt.

Lien-this is a right afforded to a creditor who is already in possession of the debtors property, to retain or keep possession of such property belonging to the debtor until the debt owed is cleared.

Surety-this can be in the form of money advanced or given as a guarantee that the debtor will pay his or her debt. Or can be in the form of an independent third party who takes the responsibility or gives an assurance to the effect that in the event that the debtor fails to pay, the surety (third party) becomes liable for the debt and thus will pay on behalf of the debtor.

Security therefore ensures that in the event that whatever is owed to you is not paid back as agreed one can pursue his or her interests by seizing and selling the thing held in security to settle the dues and in the event of a surety, if the debtor fails to pay, the surety can be held liable for such debt.

DID YOU KNOW THAT?

The law criminalises property grabbing. The Deceased Persons Family Maintenance Act provides that it is unlawful to take property of the deceased without an order from the court. Report cases of anyone who tries to grab the deceased property to the police.

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4 Edmonds Avenue, Belvedere, Harare

Cell: 0772 368615 | 0783 393 481 | Tel: 04 751573 | 751590

Email: intern@nnlawpractice.co.zw | Website: <http://nnlawpractice.co.zw/>