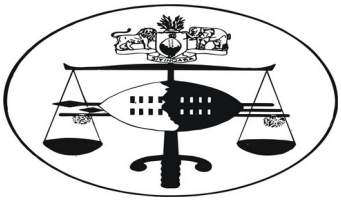

IN THE SUPREME COURT OF SWAZILAND

JUDGMENT

Civil Appeal Case No: 40/2017

In the matter between:

GREGORY ARCHIBALD NEWELL	**APPELLANT**
And	
SIPHESIHLE SHARON MALAZA	**1ST RESPONDENT**
FIRST NATIONAL BANK OF SWAZILAND LTD	**2ND RESPONDENT**
STANDARD BANK OF SWAZILAND	**3RD RESPONDENT**
STANLIB SWAZILAND (PTY) LTD	**4TH RESPONDENT**

Neutral citation: *Gregory Archibald Newell vs Siphesihle Sharon Malaza N.O (40/2017) [2017] SZHC 54 (2017)*

Coram: **M.C.B. MAPHALALA, CJ**
S. P. DLAMINI, JA
R. J. CLOETE, JA

Heard : 31 OCTOBER, 2017

Delivered : 20 NOVEMBER, 2017

SUMMARY

Civil Appeal – Universal Partnership – essential requirements thereof – the parties cohabited together for less than two months and they were engaged to marry and establish a matrimonial home – the appellant deposited monies to first respondent's bank accounts to buy land and build a home for both of them – the alleged partnership was terminated abruptly by the appellant when the first respondent was suspected of cheating – first respondent demanded a fifty per cent share of the assets on the basis of a universal partnership;

Held that the conduct of the first respondent towards the appellant militates against a finding that a universal partnership existed between the parties;

Held further that the appeal is allowed, and, that all monies held by the first respondent in respondents bank accounts is the property of the

appellant and that the respondents are ordered to pay such monies to him into a bank account appointed by him for that purpose;

Held further that the first respondent is directed to return forthwith to the appellant all his personal assets;

Held further that the first respondent is ordered to restore occupation and possession of all properties concerned to the appellant;

Held further that the first respondent is ordered, within a period of fourteen days of this order to account fully to the appellant in writing and file such report with the Registrar of this Court;

Held further that the first respondent is entitled to keep the Hyundai motor vehicle as well as the monthly amounts of E25, 000.00 (Twenty Five Thousand Emalangeni) appropriated as living expenses, which assets shall constitute compensation to the first respondent for her labour in the construction of the house at Ngwenya;

No order as to costs.

JUDGMENT

JUSTICE MCB MAPHALALA, CJ:

[1] The appellant lodged an ex parte application on an urgent basis in the court a quo against the first respondent seeking a rule nisi in respect of the following orders: Firstly, directing the First National Bank of Swaziland to freeze the bank account of the first respondent account No. 62088279156; Secondly, directing the Standard Bank of Swaziland to freeze the first respondent's bank account. Thirdly, directing the first respondent to restore immediate possession to the appellant of the rented apartments at Madonsa Township and Fairview North in Manzini together with the appellant's household goods, clothing and documents in order to enable the appellant to resume occupation of the apartments. Fourthly, directing the first respondent to supply the appellant with all keys to the said apartments to enable him to resume occupation and possession of the apartments and/or alternatively that the Sheriff be appointed to change the existing locks to enable the appellant to gain access to the apartments. Fifthly, directing the first respondent to hand over to the appellant all keys to

the appellant's motor vehicle, a Honda Civic and motor cycle accessories in order for him to gain access to the use of the motor vehicle and motor cycle. Sixth, directing the first respondent to restore possession to the appellant of the house under construction at Ngwenya. Seventh, that in the event the first respondent fails to comply with the rule nisi within twenty four hours of service of the order, the Deputy Sheriff be authorised to take all reasonable steps as may be necessary to restore such possession to the appellant.

[2] The appellant is a Canadian national who was married to the first respondent's aunt in 1993 in Brampton, Ontario in Canada. In the year 2000 the appellant and his deceased wife had visited Swaziland so that he could be introduced to his in-laws. The appellant's wife died in 2014, and, she was buried in Canada. Sometime in 2015 the appellant paid a courtesy call to his in-laws in Swaziland, where he stayed with the family for a month. It was during this period that the parties agreed to marry each other.

[3] The appellant returned to Canada in 2015. Upon his return he sent Twenty Thousand Canadian Dollars to the first respondent to buy

herself a motor vehicle, a Hyundai, and further pay rental for an apartment which she had taken occupation at Fairview North in Manzini. The amount sent to the first respondent was equivalent to E200, 000.00 (Two Hundred Thousand Emalangeni) in local currency at the time in 2015.

[4] Subsequently, and in anticipation of the marriage between them, it was agreed that the appellant would leave his country and settle with the first respondent in Swaziland. They further agreed that the appellant would sell his home in Canada and move all his household goods and belongings from Canada to Swaziland. Similarly, they also agreed that the appellant would import his motor vehicle, a Honda Civic 2012 model and motor cycle, a Yamaha spiker 1300 to Swaziland.

[5] The first respondent secured a portion of land on Swazi nation land in May 2016 at Ngwenya where the parties agreed to build their permanent home. The appellant sent One Hundred Thousand Canadian Dollars to the first respondent to buy the land and build their home in May 2016. This money is equivalent to One Million

Emalangeni in local currency, and, it was transferred into a bank account held by the first respondent at First National Bank in Swaziland. In June 2016 a further amount of One Hundred Thousand Canadian Dollars was transferred into the same account at the instance of the first respondent allegedly because the first transfer was insufficient for the construction of the house. This brings the total amount of money transferred to the first respondent for the purchase of land and construction of the house to Two Million Emalangeni. Subsequently, in June 2016 the appellant sold his home in Canada as well as his motor vehicle and motor bike and moved to Swaziland. The appellant arrived in Swaziland in August, 2016. They rented another apartment at Madonsa Township to store the household goods.

[6] It is apparent from the evidence that the appellant arrived in Swaziland in July 2016, and, they resided together at the rented apartment in Fairview North in Manzini. However, in August 2016 serious disagreements arose between the parties over access to the apartment since the appellant did not have a duplicate key. There was a further dispute on how the money sent by the appellant to construct

their home had been utilised, the appellant demanding an account. The appellant was also demanding access to the bank accounts where the money he had sent was kept. The first respondent eventually locked out the appellant from the apartment at Fairview North in September 2016; and, he had to reside at the apartment at Madonsa Township where the household goods were kept.

[7] The appellant accused the first respondent of making daily bank withdrawals as well as buying her boyfriend a new kombi, building a block of apartments at Kashali in Manzini on a piece of land that she had acquired as well as buying her sister a kombi. The conflict between the parties culminated in the laying of a criminal charge by the appellant against the first respondent at the Manzini Police Fraud Department on the 14th November, 2016. The appellant believed that the first respondent was not interested in the marriage but had devised and orchestrated a scheme to extract money from him; however, the first respondent was able to convince the police that she was entitled to keep the property since she was engaged to marry the appellant, and, the police abandoned the criminal charges.

[8] It is common cause that the court a quo issued a rule nisi on the 25th November, 2016 and the first respondent opposed the application and filed an answering affidavit denying the allegations in the founding affidavit. In his replying affidavit the appellant disclosed that the first respondent had moved funds from the First National Bank to two bank accounts at Standard bank as well as Stanlib Bank in Mbabane. The appellant denies that the money transferred to the first respondent belonged to the estate of her late aunt as alleged by the first respondent and avers that this was his money; and, there is no evidence to the contrary. He also disclosed that an amount of Thirty eight Thousand Canadian Dollars was paid to his mother in-law by a Canadian Insurance Company upon the death of his wife as an insurance benefit; this amount is the equivalent of E380, 000.00 (Three Hundred and eighty Thousand Emalangeni) in local currency. He contends that in any event the first respondent is not a beneficiary to the estate of his wife, and, that according to the Canadian law which is applicable to their marriage, he stands to benefit from his wife's estate as the husband. Currently, the appellant resides in a Guest House and contends that he has also been locked out at Madonsa Township; this has not been denied by the first respondent.

[9] Another application was lodged by the appellant on the 27th January, 2017 on an urgent basis seeking the following orders: Firstly, directing that all monies transferred by the appellant to the first respondent's bank accounts are funds owned at First National Bank by the appellant being Account No. 62088279159, Standard Bank Account No. 911000589066, Standard Bank Account No. 911000608761 as well as Stanlib linked accounts numbers 911000589066 and 911000608761 Standard Bank Mbabane. Secondly, directing that Stanlib freezes and stops all transactions going through the account opened in the first respondent's name. Thirdly, directing the First National Bank, Standard Bank and Stanlib to transfer the remainder of all funds in the bank accounts that he will open for that purpose and for his use. Fourthly, directing the first respondent to release bank statements for account number 911000608761 and Stanlib account linked to the aforesaid account numbers to the appellant for purposes of this application. Fifthly, directing the first respondent to refund the balance of the funds transferred on the 27th May and 28th April 2016 as well as 24th September, 2016 from the bank accounts at First National Bank,

Standard Bank and Stanlib and other foreign bank accounts to the appellant. Sixth, declaring that the appellant is the sole and lawful owner of the house at Ngwenya. Seventh, directing that the pending application under High Court Civil Case No 2076/2010 be consolidated and heard as one with this application. Lastly, the appellant sought costs of suit in the event of opposition to this application.

[10] The appellant contends that the basis of this application is that notwithstanding the service of the court order upon the first respondent on the 25th November, 2016, she still has access to the funds. He contends that on the 30th November, 2016, she transferred E40, 000.00 (Forty Thousand Emalangeni) from the Call Account at Standard Bank; he contends that he fears that by the time the interim order is confirmed, the funds would be depleted. It is on that basis that he sought that the two applications should be consolidated and heard simultaneously as one application.

[11] The appellant has attached Annexure "GAN 2" showing the withdrawals made by the first respondent on the 30th November, 2016

after she was served with the interim order. He contends that, an analysis of his transactions with First National Bank shows that on the 28th April, 2016, she transferred E1 119, 820.83 (One Million One Hundred and Nineteen Thousand Eight Hundred and Twenty Emalangeni and Eighty-three cents) to the bank and E1 180, 637.54 (One Million One Hundred and Eighty Thousand Six Hundred and Thirty-Seven and Fifty-four cents) on the 27th May, 2016 totalling an amount of E2 300 458.37 (Two Million Three Hundred Thousand Four Hundred and Fifty-eight Emalangeni and Thirty seven cents) and E85, 518.63 (Eighty Five Thousand Five Hundred and Eighteen Emalangeni and Sixty Three cents) for opening balance. He contends that notwithstanding the interim court order, he does not have access to the moneys at the banks, the immovable property at Ngwenya, the Hyundai motor vehicle as well as possession of the apartment at Fairview North in Manzini together with household goods.

[12] The appellant further contends that the first respondent made other bank withdrawals over the counter from bank tellers amounting to E348, 250.00 (Three Hundred and Forty eight Thousand Two Hundred and Fifty Emalangeni) in addition to monies transferred to

foreign banks. Other withdrawals were allegedly made from Standard Bank call account as well as the Stanlib account linked to the Standard Banks accounts.

[13] The first respondent concedes that she received E2 200 000.00 (Two Million Two Hundred Thousand Emalangeni) and that she spent E1 756 256.11 (One Million Seven Hundred and Fifty Six Thousand Two Hundred and Fifty Six Emalangeni and Eleven cents) leaving a balance of E443 743.89 (Four Hundred and Forty Three Thousand Seven Hundred and Forty Three Emalangeni and Eighty Nine cents). However, the application lodged on the 27th January 2017 was dismissed on the 31st January 2017 on the basis that the parties against whom the orders were sought had not been cited, being the First National Bank, the Standard Bank as well as Stanlib Bank.

[14] The appellant lodged a third application on an urgent basis, which was similar to the second application except that the three banks were cited as respondents together with the first respondent. This application was opposed by the first respondent, and, she further filed an opposing affidavit. She contends that she is in a universal

partnership with the appellant, and, that she is entitled to the half-share of the assets. She further contends that the withdrawals she made were for the purchase of the land at Ngwenya, the construction of their home at Ngwenya as well as for her upkeep since the appellant made her to leave her employment. She also contends that such withdrawals were done with the consent of the appellant.

[15] It is not in dispute that the parties were engaged to marry, and, that the appellant would emigrate to Swaziland to live permanently with the first respondent as husband and wife. Her family had agreed and approved the marriage between the parties. Pursuant to the agreement to marry, the appellant purchased a motor vehicle for the first respondent and further paid for her driving lessons. It is against this background that the appellant sold his home in Canada, transferred monies from his Canadian bank accounts to the first respondent's bank accounts in Swaziland to buy land and build their home.

[16] The first respondent further contends that she is fully depended on the universal partnership, and, that she left her employment to concentrate on the construction of their homestead at the instance of the appellant.

She accuses her cousin, Sobethu Dlamini of ill-advising the appellant that she was cheating on him when that is not true. She also contends that she contributed labour and skill towards the partnership, and, that she was entitled to half-share of the assets in the event that the appellant terminated the universal partnership. She denies that the court a quo had jurisdiction to deal with the dispute relating to the home at Ngwenya which was built on Swazi nation land.

[17] The appellant denies the existence of the universal partnership between them but concedes that the parties were engaged to marry each other; he accuses the first respondent of breaching the promise to marry. He further accuses the first respondent of failing to fully account for the moneys he sent to her, rewarding herself with a monthly maintenance of E25, 000.00 (Twenty Five Thousand Emalangeni), buying motor vehicles for her boyfriend and her sister, cheating on him, evicting him from the apartment at Fairview North in Manzini as well as denying him access to his household goods. He denies that she is entitled to half-share of the assets; and, he further denies that she contributed labour and skill to a universal partnership.

Similarly, he denies that he caused her to leave her employment in order to supervise the construction of their home at Ngwenya.

[18] The matter was heard by the court a quo on the 23rd March, 2017, and, the court consolidated the two applications into one. Three issues were considered by the court a quo. Firstly, whether the parties were in a universal partnership entitling the first respondent to a fifty percent share of the assets forming the subject-matter of the litigation. Secondly, whether the Hyundai i10 was a gift to the first respondent for her sole benefit. Thirdly, whether the court a quo had jurisdiction to pronounce on the ownership of the home at Ngwenya situated on Swazi nation land. However, the court a quo only considered and gave judgment in respect of the question relating to the universal partnership.

[19] The Learned Judge in the court a quo made a finding that a universal partnership existed between the parties on the basis that the first respondent did a lot of work towards the construction of the home at Ngwenya. According to the Learned Judge, the first respondent had secured the two leased apartments at Fairview North and Madonsa,

secured somebody to draw the plans for the house, secured builders and generally saw to the construction of the house. His Lordship concluded that in the circumstances the first respondent was entitled to the fifty percent share of the assets forming part of the litigation. He further noted that the appellant contributed money whilst the first respondent contributed her labour towards the construction of their home at Ngwenya. Having come to this conclusion the Learned Judge did not see the need to consider the two other issues. He granted costs of suit in favour of the first respondent.

[20] The Learned Judge in the court a quo conceded that generally a universal partnership is established for the purpose of undertaking a commercial venture for the joint benefit of the parties with the object of making profit. His Lordship further conceded that the intention of the parties in this matter was to get married and establish a matrimonial home for their joint benefit.

[21] The appellant noted an appeal against the judgment of the court a quo which was delivered on the 21st April 2017. The grounds of appeal were as followed: Firstly, that the court a quo erred in fact and in law

to have held that the relationship between the appellant and the first respondent being a marital relationship qualified as a universal partnership. Having regard to the evidence, and in particular the conduct of the first respondent towards the appellant as well as the brief period of cohabitation, the court a quo erred to infer the existence of a universal partnership between the parties.

[22] The second ground of appeal is that the court a quo erred in fact and in law to have held that the appellant and first respondent should share all the assets of the partnership equally without the determination of the value of the assets at the time when the alleged partnership was terminated; the appellant contends that the court a quo should have called upon the first respondent to account for all monies that she received. In the alternative to the second ground of appeal, the appellant contends that the court a quo ought to have ordered the remuneration of the first respondent for her labour. The third ground of appeal is that the court a quo erred in fact and in law to have equated the legal position of cohabitees with that of spouses married in community of property in the sharing of assets.

[23] The fourth ground of appeal is that the court a quo erred in law and in fact to have awarded costs of suit to the first respondent when the appellant had succeeded in the initial application to freeze the bank accounts of the first respondent, succeeded in opposing the interlocutory application to unfreeze the Stanlib account as well as having the two applications consolidated and heard as one application; his further contention is that he substantially succeeded in the court a quo on the basis that not all orders that he sought were dismissed instead the parties were ordered to share assets equally on the basis of a universal partnership.

[24] The issue for decision before this Court is whether on the evidence does establish that a universal partnership existed between the appellant and the first respondent. This Court in Antoinette Charmaine Horton v. Roy Douglas Nicolas, Fanourakis and Two Others[1] quoted with approval the leading South African case on universal partnership being Butters v. Mncora.[2]

[25] In the Butters case the parties had lived together as husband and wife

[1] Civil Appeal Case No. 05/2013

[2] 2012 (4) SA 1 SCA at para 11 and 18

for a period of twenty years but they were not married to each other; however, they had been engaged to marry for almost ten years. They had two children of their own. Initially the appellant's husband was working for the Post Office but subsequently resigned and established a business where the respondent wife assisted occasionally until she was gainfully employed as a Secretary in a Government department; however, she stopped working after two years since the appellant wanted her to stay at home and look after the children and further maintain their common home. The appellant's business grew and he became wealthy. Subsequently, he began cheating on the respondent, and, this brought the relationship to an abrupt end.

[26] Brand JA who delivered the unanimous decision in the Butters' case found that a universal partnership existed between the parties, and, he awarded 30% of the appellant's net asset value as at the date when the partnership came to an end. In coming to this conclusion, his Lordship had this to say:[3]

> **"11. . . . the general rule of our law is that cohabitation does not give rise to special legal consequences. More**

[3] At para 11

particularly, the supportive and protective measures established by family law are generally not available to those who remain unmarried, despite their cohabitation, even for a lengthy period . . . . Yet a cohabitee can invoke one or more of the remedies, available in private law, provided of course that he or she can establish the requirements for that remedy. What the plaintiff sought to rely on in this case was a remedy derived from the law of partnership. Hence, she had to establish that she and the defendant were not only living together as husband and wife, but that they were partners. As to the essential elements of a partnership, our courts have over the years accepted the formulation by Pothier . . . . as a correct statement of our law. . . . The three essentials are, firstly, that each of the parties bring something into the partnership or binds themselves to bring something into it, whether it be money, or labour, or skill. The second element is that the partnership business should be carried on for the joint benefit of both parties. The third is that the object should be to make a profit. A fourth element

proposed by Pothier, namely, that the partnership contract should be legitimate, has been discounted by our courts for being common to all contracts.

. . . .

18. In this light our Courts appear to be supported by good authority when they held, either expressly or by clear implication, that:

(a) Universal partnerships of all property which extend beyond commercial undertakings were part of Roman-Dutch law and still form part of our law.

(b) A universal partnership of all property does not require an express agreement. Like any other contract, it can also come into existence by tacit agreement, that is, by an agreement derived from the conduct of the parties.

(c) The requirements for a universal partnership of all property, including universal partnerships between cohabitees, are the same as those formulated by Pothier for partnerships in general.

(d) Where the conduct of the parties is capable of more than one inference, the test for when a tacit universal partnership can be held to exist is whether it is more probable than not that a tacit agreement had been reached.

. . . .

19. Once it is an accepted that a partnership enterprise may extend beyond commercial undertakings, logic dictates, in my view that the contribution of both parties need not be confined to a profit making entity. . . . It can be accepted that the plaintiff's contribution to the commercial undertaking conducted by the defendant was insignificant. Yet she spent all her time, effort and energy in promoting

the interests of both parties in their communal enterprise by maintaining their common home and raising their children. On the premise that the partnership enterprise between them could notionally include both the commercial undertaking and the non-profit making part of their family life, for which the plaintiff took responsibility, her contribution to that notional partnership enterprise can hardly be denied."

[27] In Antoinette Charmane Horton V. Roy Douglas Nicolas Fanourakis and Two Others[4], the parties had cohabited and lived together as husband and wife since 1988; in 1994 they were engaged to marry each other. The appellant instituted legal proceedings against the first respondent in 2012; accordingly, they had cohabited for about twenty seven years. It became apparent during the hearing of the matter that in fact the appellant had been employed since 1986 by one of the companies owned by the first respondent's father. Upon his death the first respondent took over the companies and ran the family businesses. She continued working for the family businesses whilst cohabitating with the first respondent. She sought an order in the

[4] Footnote 1 above

court a quo interdicting the first respondent from transferring immovable property to a trust on the basis that the latter forms part of the assets of a universal partnership.

[28] This Court in the Horton's case confirmed the decision of the court a quo which had found that there was no universal partnership between the parties. In coming to this conclusion the learned Justice M. C. B. Maphalala JA, as he then was, delivering a unanimous judgment had this to say:[5]

> **" 22. The above case reiterates the Common law principles on universal partnerships; and, it does reflect the law in this country. When considering the essential requirements of the doctrine of universal partnerships as espoused by the South African Supreme Court of Appeal, I fail to comprehend how the judge a quo could be said to have misdirected herself in the judgment. It is very clear on the evidence that the appellant did not work or contribute her skills and labour for the benefit of a universal partnership with the first respondent. She discharged her duties in her**

[5] At para 22

capacity as Accounting Clerk employed by the Hillview Butchery (Pty) Ltd as well as Ngwane Poultry (Pty) Ltd, which companies were owned by the deceased and subsequently by the deceased's Estate. Any profit generated by the companies was for the benefit of the deceased and not the partnership, and subsequently for the Estate. The farm, in particular, belonged to the deceased and was not part of any partnership assets; the deceased bequeathed the farm to the first respondent, who has the right to transfer it to the Trust on the basis that it does not form part of the assets of any universal partnership."

[29] Having regard to the authorities cited above, as well as the evidence, it is my considered view that the first respondent has failed to establish, on a balance of probabilities, the existence of a universal partnership between the parties. It is well-settled in our law that universal partnerships of all property which extend beyond commercial undertakings are part of our law, and, that such partnerships do not require an express agreement; they can come into existence by tacit agreement which derives from the conduct of the parties.[6]

[6] Butters and Mcora (supra) at para 18

[30] Similarly, it is trite law that the requirements for a universal partnership of all property is the same as formulated by Pothier including universal partnerships between cohabitees, and, that the test for the existence of a tacit universal partnership is whether it is more probable than not that a tacit agreement has been reached.[7] Accordingly, the contribution of the parties should not be confined to a profit making enterprise; any activity or effort made by a party in promoting the interests of both parties in their communal enterprise should be considered. This should include both commercial enterprises as well as non-profit making activities of their family life for which that party has taken responsibility in contributing to that vision and mandate of partnership enterprise.

[31] The conduct of the first respondent militates against a finding that a universal partnership was established between the parties on the following basis; firstly, her conduct in denying the appellant access to the banking accounts. Secondly, her refusal to give a comprehensive account of the monies she received from the appellant. Thirdly, her

[7] Ibid footnote 6

refusal to accord access to the appellant to the house at Ngwenya which was being built using the moneys received from the appellant. Fourthly, her reluctance to reside at Fairview North with the appellant whose rental was derived from monies received from the appellant. Fifthly, her reckless expenditure including the purchase of motor vehicles for her boyfriend and her sister without consulting the appellant. Sixthly, her unilateral decision to leave her employment and award herself with a monthly living income of E25, 000.00 (Twenty Five Thousand Emalangeni). Seventh, her unilateral decision in transferring moneys received from the appellant to a foreign bank account. In addition she resided with the appellant for a period that did not exceed two months.

[32] The first respondent contends that the appellant brought money into the partnership and that she contributed labour and skill by securing the land on which the house was built at Ngwenya, securing a person to draft the design of the house and another person to build the house, as well as securing the apartments at Fairview North and Madonsa in Manzini. I am unable to agree with the contentions advanced by the first respondent when considering the brief period of cohabitation of

the parties as well as the conduct of the first respondent as discussed in the preceding paragraphs. Furthermore, I am not convinced that whatever the first respondent did was for the joint benefit of the parties in light of her conduct towards the appellant which culminated in the lodging of the present litigation between the parties.

[33] The monthly amounts of E25, 000.00 (Twenty Five Thousand Emalangeni) appropriated by the first respondent as living expenses suffice to compensate the first respondent for her labour in the construction of the house at Ngwenya. Lastly, it is common cause that the Hyundai motor vehicle was bought specifically for the appellant; hence, it would be logical to give the motor vehicle to the first respondent.

[34] Accordingly, and for the reasons stated above, this Court makes the following order:

(a) The appeal is allowed.

(b) All monies in the bank accounts held by the first

respondent in the second, third and fourth respondents is the property of the appellant and the respondents are ordered to pay such monies to him into a bank account appointed by him for that purpose.

(c) The first respondent is ordered to return to the appellant all his personal assets.

(d) The first respondent is ordered to restore occupation and

possession of all the properties concerned to the appellant including the leased apartments at Fairview North and Madonsa in Manzini as well as the house on Swazi Nation land at Ngwenya.

(e) In so far as the said properties are not registered in the name of the appellant, the parties shall within a period of fourteen days of this order sign all the necessary documentation to give effect to the order and failing that, the Deputy Sheriff for the Districts

of Manzini or Hhohho shall be authorised to sign all such documentation. This does not apply to the Ngwenya property which is on Swazi Nation land.

(f) The first respondent shall be entitled to retain the Hyundai motor vehicle as well as the sums of E25, 000.00 (Twenty Five Thousand Emalangeni) which she appropriated as living expenses in full and final settlement of compensation for her labour in the construction of the house at Ngwenya.

(g) The first respondent is ordered, within a period of fourteen days of this order, to account fully to the appellant, with vouchers, in respect of all monies received from the appellant by reference to all bank accounts operated by the first respondent as well as itemised expenditure of any nature out of the said funds received from the appellant.

(h) No order as to costs.

M.C.B. MAPHALALA

CHIEF JUSTICE

I agree

S. P. DLAMINI, JA

I agree

R. J. CLOETE, JA

For Appellant : Attorney Sabelo Masuku

For First Respondent : Attorney Derrick Jele