



Justice, Honour and Integrity

NATIONAL LEGAL AID CLINIC FOR WOMEN



PROPERTY SETTLEMENT



With Support from the Swedish International
Development Cooperation Agency

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FOREWORD

The National Legal Aid Clinic for Women (NLACW) was established in 1990 as a project under the Women's Rights Committee (WRC) of the Law Association of Zambia (LAZ). LAZ is a body corporate with perpetual succession and full legal status created under Act No. 47 of the Laws of Zambia. NLACW was established to provide affordable legal aid to women and children from marginalized social sectors whose means are inadequate to hire private lawyers to represent them in their pursuit of justice. Apart from legal representation, NLACW undertakes awareness raising activities on women and children's rights in order to address negative social norms and harmful traditional and cultural practices which discriminate against women; and to empower communities with knowledge and information on women and children's rights. This is done through community and school workshops, radio and television programmes and publications (posters, brochures, newsletters and posters) on various topics.

This Booklet on Property Settlement has been produced with support from the Swedish International Development Cooperation Agency.

Mandy Manda

Executive Director

WHAT IS PROPERTY SETTLEMENT?

This is the act of sharing property between two people who were previously married but have gotten divorced.

WHAT PROPERTY CAN BE SHARED?

The property that a couple gets while they are still married is shared by the parties. For this reason, all property bought belongs to them equally. It does not matter who bought the property.

WHO CAN APPLY FOR PROPERTY SETTLEMENT?

Either the husband or wife in a marriage which has just ended can apply to court for property settlement. Once the marriage ends, all the property bought during the marriage must be shared.

WHICH COURT CAN HEAR APPLICATIONS FOR PROPERTY SETTLEMENT?

This depends on the type of marriage:

- Where a couple marries under our traditional laws (or Customary Law), the couple should go to the Local Court, who will decide how the property will be shared.
- Where the couple marries at City Council, then they must go to the High Court, who will then decide how the property will be shared.
- Where the couple marries in church or some other religious building, the High Court will decide how the property will be shared.

WHAT DOCUMENTS SHOULD BE FILED IN COURT WHEN APPLYING FOR PROPERTY SETTLEMENT?

This also depends on the type of marriage:

- Where the marriage was customary, a document called a “Summons” should be filled in and submitted to the Local Court.
- Where the marriage was either a religious one, or conducted at the City Council, the document that should be filled in should be a “Summons” submitted to the High Court. This should come with a sworn document called an “Affidavit in Support”.

WHAT INFORMATION SHOULD YOU PUT IN THE AFFIDAVIT IN SUPPORT?

The information you can put in includes:

- Your name, address, citizenship and the date you were married;
- The list of all the properties that were bought while you were married;
- The list of the properties that you want;
- Any proof that the properties were bought while you were married; and
- Proof of any money that you contributed, if any.

WHAT THE COURT CAN DECIDE

The court can make any of the following decisions (or Orders) once you make an application. These include:

- An order that you be given a property. Such property can also go to any child or anyone else to hold the property on behalf of the child;
- That the property belonging to one spouse, be given to the other and t children of the family.
- An order varying any agreement relating to property made by parties to a marriage before or after the marriage was contracted.
- An order that either removes or reduces ownership of either of the parties, in property.

WHAT FACTORS ARE CONSIDERED WHEN SHARING PROPERTY?

1. The Needs of the Parties

The court will balance the needs of the parties and availability of resources. In deciding what one needs the court will scrutinize the following:

- what is available;
- the standard of living to which the parties are accustomed;
- their age and state of health; and
- perhaps less obviously, the duration of the marriage the contributions and pensions rights of both as affected by the marriage and accrued or likely to accrue.
- Therefore, needs must be balanced with other factors such as: the availability of resources that is to say the income, the earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in future.

2. Financial Obligations and Responsibilities Factor

If a party has dependents by a prior marriage or relationship, these must be disclosed and taken into account by court. Only dependents who were cared for during the marriage are eligible here.

3. The Age Factor

The age of each party is relevant because it impacts upon the earning capacity and/or the proximity to retirement.

For example, a middle aged woman with no income and with children to look after, will be protected by the court in as far as the husband's resources allow, while a young spouse is likely to have a relationship with someone else or to remarry. The court must put look at all these things when sharing property.

4. Duration of the Marriage Factor

Short term marriages will normally get short term relief. However, if there are children, even a short term marriage of two or three years will attract a large proportion of the property or capital to purchase say a house for him or her and the children.

5. The Matrimonial Home

When it comes to the matrimonial home, the court's usually sells it and divide the proceeds or ask one party to "buy out" the other. The court could also transfer that share to the other.

The court may allow one party a life interest, that is, to live in the house

till death or for a specified period, especially for the benefit of the children. The court may also postpone the sale until the youngest child is eighteen or any age after that as may be appropriate, usually due to being in an institution of learning.

The court will also tend to preserve the property for the benefit of one spouse, to live in, while the other is not deprived of all his or her interest in it.

However, where there are other properties or resources the court may order outright sale or transfer into one party's name. The party losing out may then be given a lump sum payment or reasonable maintenance payments.



WHERE TO GET HELP

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Every Police Station



www.womens-legal-clinic.com/



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