

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
BETWEEN:**

2016/HP/D178

BANJI IAN JALISO



APPELLANT

AND

CAROLINE CHILYOMBWE JALISO

RESPONDENT

**Before Honourable Mrs. Justice S. M. Wanjelani in Chambers on
the 14th day of May, 2020 .**

For the Appellant: In Person

*For the Respondent: Ms. K. Kaoma, Messrs Simeza Sangwa &
Associates*

RULING ON APPEAL

Cases referred to:

1. *Livesey v. Jenkins* (1985) 1 ALL ER 106
2. *B v. B* (1979) 1 ER
3. *Robinson v Robinson* 1979 1 ALL ER.
4. *Omar v Zambia Airways Corporation Limited* (1986) ZR 23 (SC)
5. *Kearney and Company Limited V Agip (Z) Limited and Asphalt and Tarmac* (1985) Z.R. 7 (S.C.)

Legislation referred to:

1. *The Matrimonial Causes Rules* 1973
2. *Atkins Court Forms* second Edition 2005 issue (16)(1)

This is a Ruling on the Appellant's Appeal from a decision of the Deputy Registrar dated 7th November 2019, directing the Appellant to produce the documents requested by the Respondent. The Appellant's Grounds of Appeal have been couched as follows:

- I. *That the learned Deputy Registrar erred in facts and Law ordering that the Appellant should produce the document requested for in the Respondent's application made under rule 77(4) of the Matrimonial Causes Rules of 1973 where there was evidence that the Respondent was trying to circumvent the Appellant's application made pursuant to the Judgment dated 10th October 2018 and section 55(1)(c) and (2) of the Matrimonial Cause Act No. 20 of 2007 of the Laws of Zambia as ancillary relief was already dealt with as per Ruling dated 9th May, 2018.*

- II. *That further the learned Deputy Registrar erred in Law and misapprehended the facts ordering the Appellant to produce documents requested in the Respondent's application when the Maintenance Order was currently enforce dated 9th May, 2018 the subject of the Appellant's application of the same premised on the Judgment dated 10th October, 2018 upon this Honourable Court dissolving the marriage and subsequently on 11th January 2019, the Decree Absolute was granted and not the appellant had no means to continue paying the Respondent the sum of K1,500 per month .*

The Respondent did not file an Affidavit in Opposition but proceed to argue *viva voce* during the hearing.

The background of this appeal is that the Parties' marriage was dissolved in a Judgment dated 10th October 2018 and this Court

had directed that the Petitioner should continue paying the Respondent maintenance as ordered in the interlocutory Ruling dated 9th May 2018. It was further directed that either Party could apply before the Deputy Registrar to vary or discharge the Order of maintenance.

Consequently, on 31st May 2019, the Appellant made an application for Property settlement and to Vary/discharge the Order of 9th May 2018. However, on 23rd September 2019, the Respondent filed a Notice of Application for further information relating to means pursuant to **Rule 77(4) of the Matrimonial Causes Rules 1973**, wherein the Respondent sought an Order that the Appellant furnishes the following information:

1. *Bank Statement for Bank accounts held in the Petitioner's name for the period January 2018 to August 2019. The statement must include the Bank account to which the Petitioner's salary is credited by ZESCO.*
2. *Produce pay slips for the period January 2018 to August 2019;*
3. *Produce a letter of appointment as graduate Engineer from Zesco and the contract of employment if any;*
4. *Copy of the lease agreement for the property occupied by the Petitioner;*
5. *Produce copies of Utility Bills for the property occupied by the Plaintiff from April 2019 to August 2019; and*
6. *Specify the Petitioner's monthly expenses for the period of January 2019 to August 2019 and receipts to evidence the expenses.*

The Notice was supported by an Affidavit sworn by the Respondent, **Caroline Chilyobwe Jaliso**, the gist of which was that following the Appellant's application for an Order of property settlement and to vary or discharge the Maintenance Order, she had asked through her lawyers vide letter dated 18th September 2019, to the Appellant, asking him to furnish further information relating to his means and by a letter dated 18th September 2019, he declined to do so.

The Respondent had contended that there was need for the Appellant to make full, frank and up to date disclosure of his means in order for the Court to arrive at a fair and just decision with respect to the application for property settlement and to vary or discharge the Maintenance Order granted by the Court.

In response, the Appellant filed an Affidavit in Opposition to the effect that the marriage between the Parties was dissolved and that the Court having a Decree Absolute on 11th January 2019, there was no need for the Respondent to request for further information relating to means as that had already been dealt with and what was needed was to discharge the Maintenance Order which was still subsisting.

Upon hearing the Parties who had cited various authorities such as **Livesey v. Jenkins**⁽¹⁾, **B v. B**⁽²⁾ and **Robinson v Robinson**⁽³⁾ and considering the Rule pursuant to which the application was made, the Deputy Registrar granted the Order sought, hence this appeal.

During the hearing before this Court, the Parties repeated their arguments that had been presented before the Deputy Registrar.

I have considered all the Affidavits on record, the Applicant's Notice of Appeal and the Ruling being appealed against. This is based on the fact that an appeal from the Deputy Registrar is a hearing de-novo as guided in the case of **Omar V Zambia Airways Corporation Limited**⁽⁴⁾, where the Supreme Court stated that:

“An appeal to a judge in Chambers is treated as an actual rehearing of the application and the judge should have regard to the contents of supplementary affidavits.”

and also in the case of **Kearney And Company Limited V Agip (Z) Limited And Asphalt And Tarmac**⁽⁵⁾ where it was stated that:

“An appeal from deputy registrar to a judge in chambers is an entirely fresh application.”

The Respondent had premised her application to request production of documents as to the Appellants' means on the provisions of **Rule 77(4) of the Matrimonial Causes Rules 1973**, which state:

“Any party to an application for ancillary relief may by letter require any other party to give further information concerning any matter contained in an affidavit filed by or on behalf of that other party or any other relevant

matter or to furnish a list of relevant documents or to allow inspect of any such documents, and may in default of compliance by such other party, apply to the registrar for directions."

I have also had sight of **Rule 2 of the Matrimonial Causes Rules of 1973**, which states that an ancillary relief means:

a....

b....

c...

d. a Property adjustment order and;

e. a variation order

Further the learned authors of the Atkins Court Forms at paragraph 78 state that:

“Application made to vary ancillary relief orders are themselves applications for ancillary reliefs and the ancillary relief rules and procedure applies.”

The documents on record show that on 31st May 2019, the Petitioner filed an application for property settlement and to vary or discharge a maintenance order and the Respondent alleges that her application for further information with regards to means will help the Court to arrive at a fair and just decision with respect to the said application.

It is not in dispute that **Rule 77 (4) of the Matrimonial Causes Rules** empowers a party to implore another to furnish them with

further information regarding issues that have been raised in an affidavit seeking ancillary relief, which in this case includes the variation or discharge order sought by the Appellant.

I have also perused the application for Property Settlement and to vary and/or discharge a Maintenance Order made by the Appellant.

In my view, the provisions of **Rule 77(4)** on which the application was anchored, require that some fact or matter must have been stated in the affidavit by the other party from which an application for further information would be made for purposes clarity. I note that it also refers to any other relevant matter. The Respondent has not directed me to that matter in the Petitioner's Affidavit which would require the Appellant to furnish the documents and information demanded, save to state that the said information will help the Court determine the Application sought by the Petitioner more fairly.

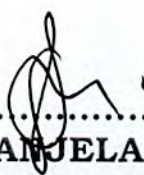
In this case, the Appellant has not alleged that he has challenges in paying the Respondent, which assertion would entail that he produces proof of his earnings and expenses to show this challenge. The Appellant has based his application on the fact that the marriage between the Parties was dissolved and thus whether he should continue paying the Respondent the maintenance as directed in the Judgment that dissolved the marriage.

Based on the foregoing, I do not see the relevance of the documents being sought by the Respondent at this stage. I therefore find merit in the appeal and set aside the Deputy Registrar's Order.

I further note that the Judgment dissolving the marriage had inadvertently directed the Parties to file an application for variation or discharge of the Order dated 9th May, 2018 to be made before the Deputy Registrar. This was a misdirection as that Order was made in a Ruling by this Court and any variation or discharge thereof ought to be made before this Court and not the Deputy Registrar. In the premise, the Appellant is directed to file the application to vary or discharge the 9th May, 2018 Order before this Court while the one in relation to property settlement should be made before the Deputy Registrar.

Costs are for the Appellant to be taxed in default of agreement.

Delivered at Lusaka this 14th day of May, 2020.


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S.M. WANJELANI
HIGH COURT JUDGE