

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)

APPEAL NO. 92/2002

B E T W E E N:

PAKALALA CHILESHE APPELLANT

AND

ALINESS JULIET TEMBO 1ST RESPONDENT

JOSEPH TEMBO 2nd RESPONDENT

CORAM: LEWANIKA., DCJ., MAMBILIMA, SILOMBA JJS
On 25th March, 2003 and 30th September, 20004

For the Appellant: In Person
For the 1st Respondent: In Person
For the 2nd Respondent: No Appearance

JUDGMENT

LEWANIKA DCJ., delivered the judgment of the court.

This is an appeal against the decision of a Judge of the High Court which we shall refer to in more detail later. In this appeal we shall refer to the Appellant as the Defendant and the 1st Respondent as the Plaintiff, which is what they were in the court below.

This appeal has its origin in proceedings that were instituted as far back as 1985. The dispute between the parties was about a house jointly

bought by the parties. At the time of acquiring the house the parties were lovers and were living together as 'husband' and 'wife.' Subsequently the relationship soured and the Defendant threatened to burn the Plaintiff who fled from the house and instituted proceedings against the Defendant relating to the house.

After a trial the late Justice MUZYAMBA found for the Plaintiff and made orders, inter alia, that the Defendant pays to the Plaintiff half of the amount of rent received for periods which were given in the judgment and that the house should be valued by the Commissioner of Lands and that the Plaintiff gets half the market value of the house less the mortgage redemption figure and mortgage payments made by the Defendant. If the Defendant refused, then the house would be sold and the proceeds shared by the parties in accordance with the above formula, that is the value of the house less mortgage redemption figure etc divided by two.

The Defendant's application in the court below finds its origin in the above judgment. The late Mr. Justice MUZYAMBA delivered his judgment on 18th January, 1993 but by 30th November, 1994, the Defendant had not complied with the terms of the said judgment. As a result the Plaintiff had the house valued not by the Commissioner of Lands but by a registered private valuation surveyor. On 30th November, 1994 the Plaintiff took out

summons out of the Principal Registry seeking an Order of the court to have the house sold. On 7th April, 1995 the Deputy Registrar granted the Plaintiff the Order she sought and ordered that the house be sold and the proceeds shared equally between the parties. The house was accordingly sold to one Joseph TEMBO who was joined as a second Defendant in the proceedings in the court below. After temporizing the Defendant appealed against the Deputy Registrar's Order to a Judge at chambers. The Judge dismissed the appeal. The Defendant appealed further to this court which dismissed the Defendant's appeal on 22nd June, 1999.

After deducting the costs of the sale and the mortgage redemption figure etc, the proceeds of sale were shared equally between the Plaintiff and the Defendant. Each party was due K8,205,456.70. The Defendant was advised by the Plaintiff's advocates to pick up his cheque but he did not want to do so. On 23rd October 1995 the Plaintiff paid the K8,205,456.70 into court. On 22nd February, 1996 the Defendant took out the K8,205,456.70 paid into court. All these events took place before the determination of the Defendant's appeal by this court.

After our judgment was delivered, on 29th October, 1999 the Defendant took out a summons before the Deputy Registrar to enforce the judgment of the late Mr. Justice MUZYAMBA. The Deputy Registrar

found on the facts before him that the application was misconceived and dismissed it. The Defendant then appealed to a Judge at chambers and the decision of the Judge at chambers is the subject matter of this appeal.

The Judge in the court below found that the Defendant had introduced new matters which were not part of the appeal either against the earlier Order of the Deputy Registrar or against the Ruling of the High Court Judge. These new matters were dealt with by the Judge in the court below who dismissed the Defendant's appeal. The learned Judge in the court below was on firm ground in dismissing the Defendant's appeal as the evidence on record shows that the house was sold and the proceeds shared in accordance with the judgment of the late Mr. Justice MUZYAMA and that the Defendant had accepted his share of K8,205,456.70. This appeal is totally devoid of merit and we would agree with the sentiments of the Judge in the court below that this case is a classic example of abuse of the court process and we dismiss the appeal with costs. The costs are to be taxed in default of agreement.

D.M. Lewanika
DEPUTY CHIEF JUSTICE

IM.C. Mambilima
SUPREME COURT JUDGE

S.S. Silomba
SUPREME COURT JUDGE