IN THE SUPREME COURT FOR ZAMBIA
HOLDEN AT KABWE

SCZ/8/017/2015
APPEAL NO. 60/2015

(Civil Jurisdiction)

BETWEEN:

MATTHEWS CHISHIMBA NKHATA **APPELLANT**

AND

ESTHER DOLLY MWENDA NKHATA **RESPONDENT**

Coram: **Mambilima, CJ, Malila and Mutuna, JJS**
on 7th November, 2017 and 28th November, 2017

For the appellant: Mr. F. S. Kachamba of Messrs EBM Chambers

For the respondent: No Appearance

JUDGMENT

MALILA, JS, delivered the Judgment of the Court

Cases referred to:

1. *Khalid Mohamed v. Attorney-General (1982) ZR 49.*
2. *Mohamed A. Oma v. Zambia Airways Corporation Limited (1986) ZR 23.*
3. *Galaunia Farms Limited v. National Milling Corporation Limited (2004) ZR 1.*
4. *Abroth v. North Eastern Railway Co.*
5. *Watchel v. Watchel (1973) 1 ALL ER 829 at 38.*
6. *Rosemary Chibwe v. Austine Chibwe SCZ Judgment No. 38 of 2000.*
7. *Fribance v. Fribance (1957) 1 ALL ER 357.*
8. *Fabion Ponde v. Charity Bwalya Appeal No. 51 of 2011.*
9. *Teddy Puta v. Ambindwire Phiri, Selected Judgment No. 43 of 2017.*

Other works referred to:

1. *P. Murphy,* ***Murphy on Evidence****, 5th ed. Universal Law Publishing, (1995).*

Other legislation referred to:

1. *Rules of the Supreme Court (White Book) (1999 ed.).*
2. *Order 33(10)(I) of the High Court Rules, chapter 27 of the laws of Zambia.*

The present appeal calls into question, yet again, the appropriateness of resorting to the judicial process to resolve seemingly bitter property adjustment and financial provision disputes between erstwhile lovers following an irretrievable breakdown of their matrimonial bond. Once their love life is over following a period of matrimonial harmony and bliss, the situation between the former married couple typically descend into one of acrimony and discord. Not unexpectedly, emotions on either side are high. Therapeutic intervention, counselling or mediation may well be a possible panacea to the parties' predicament, and so is the outright legal route. In the present case, the parties preferred the latter course. They dragged each other to court.

The marriage was contracted in February 2006. The man was a driver while the woman was a nurse. Irreconcilable differences led the parties to separate. The marriage was subsequently dissolved six years after its contraction on the ground that the parties had lived separate and apart for two years immediately preceding the presentation of the divorce petition and the respondent consented to the divorce being granted. This in effect means that the parties only lived together in marriage for four years. There is living one child of the family born to the parties.

While the marriage subsisted, the parties allegedly acquired various items of property. Of this property, the ones placed in the family property settlement pool are a house built on Plot B20/01 Mtendere East, Lusaka (hereinafter called 'the second house') and three motor vehicles, namely, a Canter light truck registration No. AAY 9815, a Golf car registration No. AAL 6691 and a Peugeot registration No. AAL 5572. There was, additionally, the question of monthly maintenance for the child of the family.

The appellant's version of the position was that he did not own either of the two houses erected at Plot B20/01 Mtendere East, one of which was the second house, as that plot belonged to his late father, Sylvester Nkhata. The latter had given the property to the respondent and his two siblings before his demise; that the two houses were built on the plot by his siblings between 1999 and 2003 and that when he married the respondent in 2006, he went to occupy the second house which he is presently still occupying with his new wife and two children.

The appellant also denied owning any of the three vehicles, stating that the registration books to those vehicles were neither in his name nor that of the respondent. The vehicles merely came into his possession by reason of his being a driver and a mechanic.

In a post divorce property adjustment application before the District Registrar made in terms of sections 55 and 56 of the Matrimonial Causes Act No. 20 of 1997, the respondent sought an order directing the equitable sharing of this property. She also pleaded to the court to order the appellant to provide regular support to the child of the family by way of a monthly

maintenance allowance. The learned District Registrar made certain findings of fact and pronounced consequent orders by virtue of which matrimonial property was adjusted and a child maintenance order granted against the appellant.

Unhappy with the District Registrar's findings and orders, the appellant appealed to the High Court at chambers, alleging multiple errors and misdirections on the part of the learned District Registrar. In particular, the appellant was unhappy with orders made in regard to the second house; in relation to one of the motor vehicles, namely the Canter; and concerning the maintenance monthly sum for the child of the family. The appellant was also aggrieved by the alleged failure on the part of the learned District Registrar to order the respondent to contribute towards the maintenance of the child of the family.

Upon hearing the appeal and considering the arguments of the parties, the learned High Court judge found that the second house at Plot B20/01 Mtendere East, Lusaka, was either built after the marriage was contracted or by 2003 but that it was in any case completed after the marriage. She declined to upset the findings of the District Registrar on this issue and upheld his

decision that the second house was part of the matrimonial property amenable to property adjustment. She ordered that the second house be valued and the proceeds shared equally, or that the respondent be given a 50% share of the value of the property.

On the vehicles, the judge found that the appellant had provided proof of ownership of the three vehicles by other people, which evidence was not challenged. The Canter was, however, an exception. Although the registration documents produced showed that it belonged to Ellensdale Farm, this evidence of ownership was, however, according to the judge, rebutted by further evidence by way of a document executed by Ellensdale Farm evincing a sale of the said vehicle to the appellant as at 18th October, 2007. She upheld the District Registrar's order that the Canter be sold at market value and the proceeds shared equally between the parties, or that the respondent be paid 50% of the value of the said motor vehicle.

In regard to the maintenance for the child of the family, the learned High Court judge, upon construing the provisions of section 56(3) of the Matrimonial Causes Act No. 20 of 2007, held that both parties should contribute to the maintenance of the

child with the appellant paying the child's school fees and a monthly maintenance amount of K300 from April, 2014. The respondent was ordered to be responsible for replacing school uniforms as and when need arose and for taking care of the medical requirement of the child as well as her general upkeep. The respondent was also ordered to meet the transport costs of the child to and from school.

Aggrieved by the High Court judgment, the appellant has now appealed on four grounds structured as follows:

1. **The learned judge below misdirected herself in law and fact when she held that the second house on the plot was built during the subsistence of the marriage and the petitioner has shown that she has beneficial interest in the same and as such the second house should be valued and sold and proceeds shared equally.**

2. **The learned judge below misdirected herself in law and fact when she held that the evidence of the property being in an illegal settlement does not appear anywhere in his sworn affidavit and thus will be disregarded as an afterthought.**

3. **The learned judge below misdirected herself in law and fact when she held that she cannot fault the District Registrar's findings that the Canter was acquired during the subsistence of the marriage and forms part of the matrimonial property to be shared despite the ownership details remaining unchanged,**

and as such she ordered the Canter to be sold at market value and proceeds shared equally between the parties.

4. **The learned judge below misdirected herself in law and fact when she held that the respondent should pay the child's school fees and monthly maintenance of K300-00.**

At the hearing of the appeal, Mr. Kachamba, learned counsel for the appellant, was present. There was, however, no appearance by the respondent or her legal representative. Upon getting confirmation from the Clerk of Court that service of the notice of hearing was effected on the respondent, we proceeded to hear the appeal in the absence of the respondent, noting that the respondent had in any case filed heads of argument on 11th August, 2015 which we had duly considered.

Mr. Kachamba indicated that he was placing reliance on the heads of argument that were filed on behalf of the appellant on 23rd April, 2015.

In respect of ground one of the appeal, it was contended that the learned judge was wrong to hold, as she did, that the respondent had a beneficial interest in the second house built at Plot B20/01 Mtendere East, Lusaka, as there was no evidence adduced by the respondent to support her allegation. The

respondent, according to the appellant's learned counsel, bore the burden of proving that the second house was built during the subsistence of the marriage. From the perspective of the appellant, the respondent failed to prove this fact and the court had, therefore, no basis for the finding that it made, especially given that the appellant had testified that the plot on which the second house was constructed did not have any document evincing title or ownership. In this regard, our attention was drawn to the record of appeal where evidence given by the appellant in the lower court was recorded as follows:

> **I have not produced the house documents as it does not have any papers as it is on illegal settlement. It just came to our knowledge that it was Salama Farm encroached by MMD Cadres and my father bought from them not knowing it was illegal. This is family property as it was acquired by my late father who had two wives and I am from the first wife and 3 other siblings. It was given to us as children. We started building together as a family.**

Adverting to **Murphy on Evidence**, 5th ed. (1995) counsel for the appellant argued that the burden of proving the allegation that the second house at Plot B20/01 was amenable to property adjustment as it belonged to the appellant or indeed the appellant and the respondent together as a couple, rested on the

respondent (who was the applicant). The learned counsel quoted the following passage from **Murphy on Evidence:**

> **The legal burden of proof as to any fact in a civil case lies on the party who affirmatively asserts that fact in issue, and to whose claim or defence proof of the fact in issue is essential.**

It was further contended that the burden of proof ought to be discharged even where the appellant's (then respondent's) defence had failed. We, in this regard, were referred to the case of **Khalid Mohamed v. Attorney-General**[1]. Relying on the case of **Galaunia Farms Limited v. National Milling Corporation Limited**[3], as authority counsel submitted that a plaintiff must in every case prove her case, and where she fails to do so, the mere fact that the opponents defence fails does not entitle her to judgment. In the present case, the respondent failed in the lower court to prove the allegations that she made as regards the ownership of the second house.

In respect of ground two of the appeal, the contention of the appellant was that the judge below erred when she held that the evidence of the houses at Plot B20/01 Mtendere East being on an illegal settlement, does not appear anywhere in the

appellant's sworn Affidavit and proceeded on that basis to disregard, as an afterthought such averment by the appellant.

In arguing this ground of appeal, it was contended that an appeal before a Deputy Registrar takes the form of a re-hearing as was explained in the case of **Mohamed A. Oma v. Zambia Airways Corporation Limited**[2]. In this case, therefore, the learned judge below properly treated the appeal as such. It was for this reason that she allowed the parties to be cross-examined. Yet, it was also in this vein that the appellant submitted that he did not produce any documents of title to the property as it was on an illegal settlement. The substance of this submission, as we understand it, is that in circumstances of a re-hearing, that evidence should not have been discounted as an afterthought by the learned judge.

The cross-examination of the respondent, according to the appellant, also revealed that she did not conduct a search on Plot B20/01 Mtendere East to establish the exact ownership status of the property.

The third ground of appeal is devoted to the Canter, light truck, which the lower court held was matrimonial property

amenable to property adjustment. It was argued on behalf of the appellant that the said vehicle did not belong to the appellant but to Ellensdale Farm and should thus not have been a subject of property adjustment. According to the appellant, the respondent, once again, failed to prove that the said motor vehicle belonged to the appellant.

In ground four, the appellant is unhappy with the High Court order that directed him to pay his own infant daughter's school fees and a monthly maintenance allowance of K300.00. The reason for the appellant's displeasure, according to the submissions of his counsel, is that he cannot afford K300.00 monthly maintenance as his net monthly income is only K2,057.50. As such he could only afford to pay K150.00 per month in maintenance for his daughter. According to the appellant, he has two other children that he has responsibility over. Given his meagre monthly earnings, it was unjust to order him to pay a monthly maintenance allowance of K300.00 to one child. Counsel ended by urging us to uphold the appeal

In her heads of argument, the respondent impugned the arguments made on behalf of the appellant. Her position, as

regards the first ground, which she argued together with the second ground, is that the second house was in fact built during the subsistence of the marriage and that this fact is not disputed by the appellant. She referred us to the record of proceedings before the learned District Registrar and quoted the submissions of the appellant's own counsel as follows:

> **When the parties got married they went and stayed on the same property for the one property was finished and that other house was finished when the parties were married and staying together.**

The respondent submitted that in regard to property adjustment following a divorce, it was sufficient to show, as the evidence did in this case, that the property in question was acquired during the subsistence of the marriage.

In rebutting further the submission on behalf of the appellant that the respondent's claim should have failed as she did not tender any evidence to substantiate it, the respondent posited that the appellant too, did not show any evidence that the house in question was family property. She quoted the dictum of Bowen L J in **Abroth v. North Eastern Railway Co.**[4] where he stated that:

> **Whenever litigation exists somebody must go on with it; the plaintiff is the first to begin, if he has nothing he fails; if he makes a prima facie case and nothing is done to answer it; the defendant fails. The test, therefore, as to the burden of proof or onus of proof, whichever the terms is used, is simply this; ask oneself which party will be successful, if no evidence is given or if no more evidence is given that has been given at a particular point of the case, for it is obvious that as the controversy involved in the litigation travels on, the parties from moment to moment may reach points at which the onus of proof shifts, and at which the tribunal will have to say that if the case stops there, it must be decided in a particular manner.**

According to the respondent, the moment the appellant stated that the second house was a family house, and was erected on an illegal settlement, the onus shifted to the appellant to adduce evidence to support his claim. This, according to the respondent, the appellant failed to do both before the District Registrar and the High Court judge.

The respondent referred us to the case of **Watchel v. Watchel**[5] for the definition of family assets and submitted that the second house qualified to be treated as family property and therefore subject to post divorce property settlement. She also cited the case of **Rosemary Chibwe v. Austine Chibwe**[6] on the nature and form of family property. She maintained that she had made in-kind

contribution towards the building of the second house and, therefore that there was no need for her to submit documentary evidence in the form of receipts or by calling witnesses to come and testify as to her contribution.

The respondent agreed with the learned High Court judge when she held that the claim by the appellant that the second house was built on an illegal settlement was an afterthought as the appellant failed to show any document proving that allegation. In the respondent's view, this is further complemented by the fact that the appellant has continued to live in the same house which he had boldly asserted was constructed on an illegal settlement.

According to the respondent the mere fact that the house may have no certificate of title or occupancy licence did not mean that it was on an illegal settlement; nor had it indeed been shown that the true owners of the land had attempted to assert their title. On these bases we were urged to dismiss grounds one and two of the appeal.

In relation to ground three of the appeal, the respondent submitted that the High Court fell into no error or misdirection

as is being alleged by the appellant under this ground. She reminded us of her statement in cross-examination in the lower court set out in the record of appeal where she testified before the learned High Court judge as follows:

> **When he was doing the transaction, he had an Isuzu I found him with. He did not finish paying for it as well as his business was not doing well and I advanced him money to pay off. When he sold the Isuzu, he said he wanted to buy a Canter.**

She also drew our attention to the evidence adduced in the lower court showing that there was a change of ownership of the Canter from Ellensdale Farm to the appellant and that the appellant, on oath, stated how he acquired the Canter and what it was being used for. We were urged to dismiss ground three of the appeal as well.

The respondent's short response to ground four of the appeal was simply that taking into account the provisions of section 56(1) of the Matrimonial Causes Act and the parties' circumstances, the court properly rationalized its decision to direct the appellant to pay a monthly maintenance sum of K300.00 for the child of the family and that the appellant pays the child's school fees. She also pointed out that she too has a

responsibility towards the upkeep of the child of the family as correctly pointed out by the court. Ground four, according to the respondent, has no merit and should be dismissed.

We have considered, with interest, the parties' respective positions regarding the question of property adjustment and maintenance for the child of the marriage. We lamented at the very outset of this judgment that issues of property settlement between parties whose matrimonial union has collapsed, invariably invoke emotions and bitterness between parties who once loved and kept each other's confidences. It is thus always an ominous exercise for the court to undertake.

The questions for determination in this appeal is simply whether there was a proper legal justification for the lower court to make the three orders which have now so riled the appellant that he believes he was denied justice by the lower courts.

The first thing that any court considering a property adjustment application is to ask itself is whether the property concerned is family property and thus amenable to property settlement. In **Watchel v. Watchel**[5], family property was described as:

All properties acquired by the parties during the subsistence of the marriage which are intended to be continued provision for the family as a whole.

The second factor to consider is whether the applicant for property adjustment made any contribution to the acquisition of that property. In the present case, therefore, the court had to be satisfied that the property subject of the application was matrimonial property amenable to property adjustment and that the respondent (applicant) had contributed to its acquisition.

The appellant's only argument, as we understand it here, is that neither the second house nor the Canter are matrimonial property which should be subject to property adjustment as they were not in fact 'acquired' as such; that they belonged to third parties. Given his line of argument, he understandably makes no contestation on the aspect of contribution by the respondent to the acquisition of that property.

The legal authority for a court to make property adjustment is in section 55(1)(b) of the Matrimonial Causes Act which reads as follows:

> **55(1) The court may, upon granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter, whether, in the case of decree of divorce or of nullity of marriage, before or after the decree is made absolute, make any one or more of the following orders:**
>
> > **(b) an order that settlement of such property as may be specified, being property to which a party to a marriage is entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them.**

It is important to note that this provision does in effect define property which is amenable to property adjustment after divorce. Such property must be "property to which a party to a marriage is entitled." In our view, such property is family property as defined in **Watchel v. Watchel**[5].

It is settled that in undertaking property adjustment courts do accept non-financial contributions by a spouse in the form of, for example, tending the house, providing for various family needs and thus relieving the other spouse of some domestic and financial burdens. Such contribution, like financial contribution, entitles a spouse to a share of the matrimonial property ostensibly purchased or acquired solely by the other spouse. This

consideration in the area of post-divorce settlement of matrimonial property accords with the need to ensure equitable distribution of family property. In this regard, the court views the contribution of the parties to the acquisition of property broadly.

In **Fribance v. Fribance**[7], the Court of Appeal, in holding that in-kind contribution of a spouse to property acquired during a marriage was sufficient to entitle the spouse to a share of that property, asserted as follows:

> **In the present case, it so happened that the wife went out to work and used her earnings to help run the household and buy the children's clothes, whilst the husband saved. It might very well have been the other way round.... The title to the family assets does not depend on the mere chance of which way round it was. It does not depend on how they happened to allocate their expenditure. The whole of their resources were expended for their joint benefit .... And the product should belong to them jointly. It belongs to them in equal shares. (Per Lord Denning).**

In **Fabion Ponde v. Charity Bwalya**[8], we underscored the point that it does not matter that financial contribution was not made by both spouses to the acquisition or development of family assets; what matters is that the parties to the marriage make contributions either materially or in kind towards those assets.

In our considered view, the tendency to have family property shared equally between spouses is predicted on the belief that both spouses made contributions, financially or in-kind, to the purchase, acquisition or construction of that property. Although indeed parties to a marriage are recognized as equal, equality and fairness implies that when their love life is over, the parties to a marriage should each walk out with a share of what they contributed. A marriage is not, and should never be regarded as the reason for equal sharing of matrimonial property.

If the basis for sharing family property is that both spouses contributed to its purchase or its creation, it should follow that where it can be demonstrated that one spouse invested nothing (neither financially nor in kind) in the acquisition of the property, they should technically not be entitled to a share of what was in fact an investment by the one spouse on the basis only that they had entered into a marriage. Our view is that property settlement should be undertaken on the basis of fairness and conscience; not on an unjustified reference to the 50:50 dogma. In our opinion, the sharing of matrimonial property should not reside in a fixed formula in law. It should not be a matter of

mathematics as simply in splitting a piece of land into two equal portions. Equal rights between husbands and wives do not necessarily translate, in every case, into equal portions of family property. Each case should be determined in terms of how much each party contributed and an appropriate percentage of the matrimonial property apportioned on that basis. It should follow that in a property adjustment application, a spouse making the application should demonstrate his or her own contribution to the matrimonial property either materially, financially or in kind. This, the applying spouse can do by showing how he or she contributed in concrete terms to the acquisition or development of the property by, for example, giving the necessary moral and financial support to the respondent; buying building materials needed by workmen at the site; supervising workmen while the spouse was away raising resources, or that he or she paid school fees, medical bills, and met other expenses which should have been borne wholly or in part by the respondent and thereby helped the respondent channel resources to the property.

In all cases, the applicant should show that they made a contribution. Where the respondent shows that the applicant for property settlement was in fact the number one hindrance to the

acquisition of the property and that such property was acquired in spite of, rather than with the help of the applicant, such evidence can scarcely be ignored in making property adjustment for the parties. Resort to the 50:50 philosophy in sharing such property would clearly be a naked affront to the justice of the situation in those circumstances.

Our own understanding is that it is possible for parties to a marriage to acquire property during the subsistence of a marriage that is not intended to be for the provision of the family as a whole. In a world where both husband and wife are increasingly becoming equally empowered from an economic stand point, it is possible for the parties, in addition to acquiring family property, to designate assets which are clearly not meant to be family property. Thus a working woman could well acquire with the knowledge or concurrence of her husband, property in the form of land or shares in a company which would have no immediate connection to the needs of the family. The converse could also be true. When property settlement becomes an inevitable reality for the parties placed in those circumstances, it would defeat the justice of the case to hold such property as the parties designated as extra personal investment, as

amenable to property adjustment merely because it was acquired during the subsistence of a marriage.

The situation is even more glaring when property in the nature of gifts given to one spouse by third parties during the subsistence of a marriage are considered. Can such property be deemed to be 'acquired' by the parties during the subsistence of the marriage and therefore amenable to property settlement? Can the non-recipient spouse to such donations genuinely demonstrate contribution to their acquisition? We think not.

Regrettably, property settlement in this country, as in many others, seems to proceed on the premises which, we must state, now resides in a by-gone era that it is the responsibility of the man in a marriage to fend for the family and that the woman's role is confined to performing domestic chores. This is reflected in the common phenomenon whereby it is often only the physical acquisitions of the man and his earnings that are often the focus of property adjustment after divorce. The reality today is that many women are breadwinners in their homes and are generally as empowered, if not more so, than men. Yet, property settlement

still generally focusses on the property bought for family use by the man, rather than that bought by the woman.

In the case before us, the appellant was, as we earlier observed, a driver. His payslip was exhibited in the affidavits tendered in evidence in the lower court. His net pay was K2,057.50. The respondent was a nurse. Her net pay was K3,753.93. What does not appear to have been clearly articulated is what the respondent exactly did with her salary. The lower court proceeded on the premise that merely because the property in issue was acquired during the subsistence of the marriage the respondent became entitled to fifty percent of it. Contribution to the acquisition of matrimonial property appears to have been readily assumed. The appellant has not disputed this approach.

The lower court accepted evidence before it that the second house was constructed or completed during the subsistence of the marriage, and proceeded on the basis that the respondent contributed to the costs of its construction or completion, either in kind or financially. A similar conclusion was made in respect of the light truck, namely the Canter registration No. AAY 9815. We are unable to disturb those conclusions granted that the

appellant did not dispute the marriage and the respondent's contribution to their acquisition and therefore that she acquired a beneficial interest. Ground one is bound to fail and we dismiss it accordingly.

As regards ground two, we fully agree that an appeal from the Deputy Registrar to a judge at Chambers takes the form of a rehearing. Order 33(10)(I) of the High Court Rules, chapter 27 of the laws of Zambia dealing with appeals from the Registrar to a judge at Chambers does not state the form in which the hearing before the judge should take. However, the explanatory notes to Order 58 rule 1 of the **Rules of the Supreme Court (White Book) (1999 ed.)** state as follows:

> **An appeal from the Master or District Judge to a Judge in Chambers is dealt with by way of an actual rehearing of the application which led to the order under appeal, and the judge teats the matter as though it came before him for the first time...**

In **Teddy Puta v. Ambindwire Phiri**[9], we explained what a rehearing is in the following terms:

> **A rehearing, as we understand it, entails a repeat hearing; a resubmission of the evidence, and a re-evaluation of that evidence. It presupposes that any trial judge assigned to rehear**

a matter is to begin to hear the matter afresh; on a clean slate, so to say.

The parties to an appeal in those circumstances are not confined to the documents tendered in the earlier hearing. In a rehearing new evidence could and should be allowed. In the present case, although the parties opted to rely on affidavits submitted before the Deputy Registrar, they could still offer additional evidence if they were so inclined. The appellant's statement that the subject house was built on an illegal settlement area should not, therefore, have been discounted by the learned High Court judge hearing an appeal from the District Registrar on the basis only that it was not contained in the affidavit read before the learned District Registrar, and therefore that it was an afterthought. Ground two, therefore, has merit.

Turning to ground three of the appeal, we agree with the lower court that the document that showed a change of ownership of the motor vehicle in issue from Ellensdale Farm to the appellant constituted irrefutable evidence that the Canter was in fact sold, for all purposes and intents, to the appellant. Based on what we have earlier in this judgment explained, it had

become matrimonial property amenable to property adjustment. Ground three is devoid of merit and it is dismissed.

With regard to ground four, we note that the legal and factual basis for ordering the appellant to make a monthly maintenance contribution of K300 for the child of the family, was properly explained by both the District Registrar and the High Court judge. The relevant order in this regard was first made in April 2014 by the District Registrar and affirmed by the High Court judge in January 2015. The Court Order itself was anchored in section 56(1) of the Matrimonial Causes Act. The maintenance sum was not astronomical. The Court Order is also quite clear as to what the respondent was obliged to do by way of contribution to the welfare of the child of the family. We are unable to appreciate the appellant's grievance against the court's decision in this regard.

Three years down the line, the needs of the child of the family have no doubt increased and the K300 monthly sum which was properly rationalized at the time the initial Order was made, may well be totally inadequate. We, however, have no

reason to tamper with the decision of the lower court on this point. Ground four must, therefore, fail.

Although we have found that ground two has merit, it does not change the substance of our judgment, which is that the High Court judge was substantially correct in her ruling. The upshot of our judgment is that this appeal fails. Each party shall bear their own costs.

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I. C. MAMBILIMA

CHIEF JUSTICE

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Dr. M. MALILA, SC

SUPREME COURT JUDGE

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N. K. MUTUNA

SUPREME COURT JUDGE