

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

2012/HP/165

(Divorce Jurisdiction)

BETWEEN:

Faith Bwalya Chilambwe

Petitioner

AND

Stephen Chilambwe

Respondent

**BEFORE THE HON. MR JUSTICE JUSTIN CHASHI IN OPEN
COURT ON THE 5^H DAY OF MAY, 2014**

For the Petitioner : C. Siatwinda , Legal Aid Counsel, Legal Aid Board

For the Respondent: In Person

J U D G M E N T

Legislation referred to:

1. The Matrimonial Causes Act No. 20 of 2007

Cases referred to:

2. The Attorney General v Marcus Kampumba Achiume (1983) ZR 1

On the 5th day of March 2013, the parties' marriage was dissolved and a **Decree Nisi** granted.

On the 31st day of July 2013, the Petitioner applied for maintenance of herself and the children of the family pursuant to **Section 56 of The Matrimonial Causes Act¹**. At the same

time, the Petitioner also applied for property settlement pursuant to Section 55 of the Act.

Both applications were heard at the same time by the Learned Deputy Registrar who delivered a Ruling on the 22nd day of November 2013.

In the said Ruling it was directed as follows:

- 1. That the Respondent shall pay K150.00 for each child per month for the three children on the 30th of every month bringing the total to K450.00 for each month as maintenance of the children;**
- 2. The school fees for the children shall be paid equally by the parties;**
- 3. That the house shall be evaluated at the Respondents cost by a qualified surveyor within three months and the Respondent shall pay the Petitioner half of the valuation price;**
- 4. In the event that he does not do so, the house shall be sold when the youngest child reaches the age of 21 years and the proceeds shall be shared equally.**

It is against the aforestated Ruling that the Petitioner has now appealed to this Court. According to the Grounds of Appeal filed on the 12th day of December 2013, the Petitioner alleges as follows:

1. *That the Deputy Registrar erred when she failed to make a Ruling on what ought to happen to the rentals being received from the matrimonial home;*
2. *That the Deputy Registrar erred when she failed to take into proper account the Respondents income from rentals and the Respondents salary against the Children's needs when making the Ruling on the maintenance;*
3. *That the Ruling regarding the house sale is likely to cause great injustice to the Petitioner.*

On the 27th day of February the Respondent filed a response and Cross Appeal. The Cross Appeal contains two grounds as follows;

1. *That the Deputy Registrar erred in fact when she made a finding that the house was renovated using money which should have been used in the matrimonial home. To the Contrary the Couple went on separation in May 2007 and the extension and renovation of the house only started in 2009. The Court should therefore make an Order that the house be sold to the Respondent and the Petitioner receives 50 per cent of the total evaluated value of the house less the costs of extension and renovation;*
2. *The Respondent also prays that the Hon. Court makes an Order to restrain the Appellant or any of her agents from disturbing him at the work place.*

When the matter came up for hearing on the 16th day of April 2014. I directed that the Petitioner files written submissions by

the 25th day of April and the Respondent by the 2nd day of May 2014.

At the time of writing this Judgment none of the parties had done so. I am therefore left with no alternative but to determine the Appeals based solely on the strength of the grounds. In doing so, I have taken into consideration the proceedings before the Learned Deputy Registrar.

Let me start by stating that it is trite law that an Appellant Court will not interfere with the findings of fact by a lower Court unless the said findings were either perverse or made in the absence of any relevant evidence or upon a misapprehension of facts or that they were findings which on a proper view of the evidence, no trial Court acting correctly can reasonably make.

The Supreme Court was emphatic in that respect in the case of **The Attorney General v Marcus Kampumba Achiume**². In that respect, let me start by dealing with the Respondents grounds in the cross Appeal. The first ground is based on the finding of fact by the Learned Deputy Registrar. There is no allegation by the Respondent that the finding was either perverse or made in the absence of any relevant evidence. It would seem to me that the Respondent is alleging that the finding of fact was based upon a misapprehension of facts as according to the Respondent, the extensions were not done whilst the parties were still living together, but in 2009 when they were already on separation. That as it may be, it is evidently clear that although

the parties were on separation in 2009, the marriage was still subsisting as the same was only dissolved by the Court as earlier alluded to on the 5th day of March 2013. There is no evidence on record that during the time of separation, the Respondent was meeting his obligations to the Petitioner and the children of the family. Therefore, that ground of appeal is neither here nor there and as such has no merits and is accordingly dismissed.

The second ground of appeal is couched in the form of a prayer and as such is not a ground of appeal per se, neither was the issue placed for determination before the Learned Deputy Registrar. If the Respondent wishes to apply for any injunction, prohibitory or restraining Order, he should do so formally.

In the view that I have taken, the **Cross Appeal** is **dismissed** as it has no merits.

Let me now turn back to the Petitioners appeal. I will address the grounds in a reverse manner, starting with the third ground, then second and end with the first ground of Appeal.

As regards the third ground of appeal, the Petitioner has not by any means demonstrated how the Ruling regarding the sale of the house will cause injustice to her. It is not enough to merely allege. The Petitioner needed to do more in Order to substantiate the allegation.

On the second ground of appeal, a recapitulation of the Learned Deputy Registrar's Ruling shows that she went to great length to

capture, the income of both parties and the children's needs in arriving at the quantum as regards the maintenance. The issue of whatever rentals the Respondent might have been receiving prior to the maintenance Order was not heavily canvassed by the Petitioner.

The Learned Deputy Registrar cannot therefore be faltered on that basis.

As regards the first ground of Appeal, in the event that the Respondent does not cause the evaluation of the house within three months, and pays the Petitioner 50 percent of the valuation, the Learned Deputy Registrar directed that, the house shall be sold when the youngest child reaches the age of 21 years and the proceeds shared equally between the parties.

I have difficulty in trying to understand what the youngest child turning 21 years has to do with this as the child is not in the custody of the Respondent, neither is there evidence that the child is residing in this house, nor will be entitled to the share of proceeds once the house is sold.

That as it may be, I see injustice and prejudice to the Petitioner in that if the Respondent does not evaluate the house, and pay the Petitioner the 50 per centum of the valuation he will solely continue receiving rentals from the house until the youngest child reaches 21 years.

I do not find any basis nor justification for that directive. I will therefore review that directive and **Order** as follows:

That the house shall be evaluated at the Respondents cost by a qualified surveyor within three months and the Respondent shall pay the Petitioner half of the valuation price. In the event that the Respondent does not do so, or as long as he stays without adhering to the directive, he shall continue paying the Petitioner half of the monthly proceeds from the rentals until the youngest child reaches the age of 21 years when the house shall be sold and the proceeds shared equally between the parties.

I shall make no Order as to costs.

Delivered at Lusaka this 5th day of May 2014.

JUSTIN CHASHI
HIGH COURT JUDGE