

AUSTIN GOVHA

Versus

FRANCISCA GOVHA

IN THE HIGH COURT OF ZIMBABWE
CHIWESHE J
BULAWAYO 6 FEBRUARY 2004 & 9 MARCH 2012

N. Mazibuko for the applicant
J. Dondo for respondent

Judgment

CHIWESHE J: The facts in this matter are as follows. The parties are former spouses. They were divorced in 1998 by order of this honourable court given under case number HC 3069/93. Paragraph 4 of that order dealt with the division of the immovable property referred to as stand 2402 Rutendo (2) Township, Redcliff. It reads as follows:

“(4) that the immovable property being stand 2402 Rutendo (2) Township, Redcliff, be valued by Messrs Fitzgerald and Desfontaine Estate Agents and the net value therefor after taking into account the proven liabilities of the parties be shared in proportions of two thirds of the share to the defendant and one third of the share to the plaintiff.”

The applicant was the plaintiff in that case and the respondent the defendant. Differences have arisen with regards the interpretation and enforcement of this paragraph.

The applicant seeks an order which to all intents and purposes would have the parties share the gross proceeds of the sale of the property in clear violation of the order granted under case number 3069/93. That order clearly and without any ambiguity directs that the parties share the net value after deduction of the parties “proven” liabilities.

It is a cardinal rule of interpretation that words be given their ordinary, literal grammatical meaning. The language used in the paragraph at hand does not admit of any interpretation other than the literal and ordinary meaning of the words contained therein.

The paragraph as phrased means in simple terms that:

- (i) the property must be evaluated to give its market value;

- (ii) from the market value of the property must be deducted the proven liabilities referred to; and
- (iii) the parties may then share the balance in the given proportions.

In my view therefore this application is ill conceived. Apart from misreading a clear order of this honourable court the applicant seems to be under the impression that liabilities attaching to the property should be ignored in the rush to get his share of the property. That approach is unreasonable and impractical. The order given is standard order in cases of this nature. It is always invariably the case that the net rather the gross proceeds be the shared value as between the parties.

For these reasons it is ordered that the application be and is hereby dismissed with costs.

Chihambakwe, Mutizwa & Partners c/o Calderwood, Bryce Hendrie & Partners, applicant's legal practitioners

Chinamasa, Mudimu & Chinogwenya c/o Majoko & Majoko, respondent's legal practitioners