

KUDAKWASHE CHIBAYA

Versus

ACKLINE CHIBAYA

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA & CHEDA JJ
BULAWAYO 21 MARCH 2011 AND 19 APRIL 2012

Appellant in person
Respondent in person

Civil Appeal

KAMOCHA J: This is an appeal against the decision of the Magistrates' Court sitting at Gweru. The two grounds of appeal were these.

- “(1) The court *a quo* actually (*sic*) outside its jurisdiction limits. The estate that the trial court set out to distribute far exceeded its monetary jurisdiction of US\$2 000,00.
- (2) The court *a quo* failed to come up with an equitable decision on distribution of property considering that the appellant was the breadwinner who worked for the family for over 30 years when the wife was not employed. The appellant bought almost all the matrimonial property including the home which is in the applicant's (*sic*) name which was awarded to the respondent.”

The appellant then sought for the judgment of the court *a quo* to be set aside and substituted with the following:

- “(a) appellant gets $\frac{3}{4}$ share of all the matrimonial home being number 1241 Mukoba 3 Gweru.
- (b) appellant gets $\frac{1}{2}$ share of all the matrimonial movable property acquired during the subsistence of the union.
- (c) respondent to pay costs of this application (*sic*).”

The parties in this matter were married in terms of the then African Marriages Act [Chapter 105] on 26 May 1978. Sadly, in September 2009, the wife instituted divorce proceedings against her husband and a decree of divorce was subsequently granted by the

Magistrates' Court sitting in Gweru. The Magistrates' Court was the appropriate court to handle such matters. That court has the power to make an order with regard to the division, apportionments or distribution of the assets of the spouses, including an order that any asset be transferred from one spouse to the other in terms of section 7(1)(a) of the Matrimonial Causes Act [Chapter 5:13]. The court has that authority irrespective of the value of the property provided that the marriage concerned was solemnised either in terms of the Customary Law or Customary Marriages Act [Chapter 5:07] or its predecessor the African Marriages Act.

Similarly the Magistrates' Court Act [Chapter 7:10] empowers that court in terms of section 11(1)(iv) in an action of divorce of a marriage solemnized in terms of the Customary Marriages Act [Chapter 5:07] to divide, apportion or distribute assets of spouses whether movable or immovable. The magistrate in this case was therefore entirely correct in dealing with this matter.

The next question that needs to be answered is whether or not the distribution of assets was equitable. The parties had been married for 32 years at the time their marriage was dissolved. At that time the couple had accumulated a sizeable amount of property – movable and immovable as well as livestock. They had two immovable properties which the trial court found to be of equal value. One was in the urban area while the other was in the rural area. The one in the rural area is at the original home of the husband. It would not be possible for the wife to go and live there after the divorce. She would not be accepted by people of the husband's clan and would lead a miserable life there. She was the one who built that home through her own means with some assistance from the husband.

As regards the house in Gweru it was the wife's evidence that her contribution included queuing for days and nights at the District Administrator's offices for the allocation of the property to the couple. After they had been allocated the property the money to pay for it came from the husband as he was the one who was gainfully employed. After the property had been acquired all that was done to it was done jointly as a couple. The couple lived in it for more than 30 years. As alluded to earlier on these two properties are of equal value but the wife cannot go and live in a house at the husband's rural area.

Since there were two immovable properties of equal value the trial court was correct, in my view, to award one property to each of spouses.

The appellant proffered no reason for wanting the trial court's distribution of the movable property set aside by this court. The distribution list seems equitable and there is therefore no reason for interference by this court.

In the result, this appeal is devoid of any merit and is hereby dismissed with costs.

Cheda J I agree