

DISTRIBUTABLE (6)

HILDA TENDAI MATARIRA v CAXTON HENRY MATARIRA

SUPREME COURT OF ZIMBABWE
GARWE JA, OMERJEE AJA & GOWORA AJA
HARARE, FEBRUARY 20, 2012

D Ochieng, for the appellant

M Kamudfwere, for the respondent

GARWE JA: This is an appeal against part of the judgment of the High Court dividing certain matrimonial property between the parties following the grant of a decree of divorce.

Although the appellant, in her notice of appeal, had raised five grounds of appeal, at the hearing of this matter Mr *Ochieng*, for the appellant, confined himself to two grounds. These are firstly that the court *a quo* misdirected itself in awarding a property known as the Aspen Flat to the respondent as compensation for his half share in the Knightsbridge account amounting to 10,000 pound sterling and secondly that the court *a quo* misdirected itself in awarding a non-existent property referred to as Des Vegas to the appellant.

As regards to the property known as the Aspen Flat, it is clear from the record that at the trial of this matter, the appellant sought to mislead the court in two respects. Firstly the appellant denied that the Knightsbridge account was a joint account. The court *a quo* correctly found that the account was a joint account - a fact now conceded before this Court. Secondly the appellant prevaricated on whether the funds in the account still existed.

The Court was of the view that the appellant had sought to place the funds beyond the reach of the respondent and that an order directing her to pay to the respondent half of the funds held in the account would have proved difficult to implement. It was for this reason that the court, in the exercise of its discretion, awarded the Aspen Flat to the respondent.

On these facts, I am satisfied that there was no misdirection on the part of the trial court. It is true that the court could have made an order, as suggested by *Mr Ochieng*, directing the appellant to pay to the respondent half of the sum of money held in the account. In view of the difficulties surrounding the enforcement of such an order, the court instead opted to grant the Aspen Flat to the respondent. In these circumstances such a decision cannot be regarded as a misdirection. I am satisfied that the court properly exercised its discretion and that this ground of appeal must fail. I am also satisfied that the appellant cannot at this stage offer to pay 10,000 pound sterling to the respondent so that she can be awarded the Aspen Flat.

Turning to the property known as Des Vegas, the court *a quo* was mindful of the difficulties associated with the status of the property and in particular whether it was still possible for the property to be transferred to the parties. The court *a quo* awarded to the appellant whatever rights may have existed in respect of that property. Taking into account the fact that money had indeed been paid for that property, the decision to award to the appellant any rights that may have been still in existence cannot be said to be a misdirection. In fact what the court was saying was that the appellant could pursue the matter if she so wished in order to exercise any rights or cause of action that may have been in existence.

In the result, I am of the opinion that there is no merit in this appeal.

The appeal is accordingly dismissed with costs.

OMERJEE AJA: I agree

GOWORA AJA: I agree

Gwaunza & Mapota, appellant's legal practitioners

Muringi Kamdefwere, respondent's legal practitioners