

IN CAMERA

JOCELYN CHIWENGA
v
CONSTANTINE GUYEYA CHIWENGA

SUPREME COURT OF ZIMBABWE
ZIYAMBI JA, GARWE JA & PATEL JA
HARARE, JANUARY 16, 2014

T Mpofu, for the appellant

W Manase, with him *W T Pasipanodya*, for the respondent

ZIYAMBI JA: The trial in this matter was conducted before the High Court contrary to the clear terms of the order of this Court dated 21 March 2013 which had directed that the issues of divorce and proprietary interests be dealt with at the same time.

The law is clear that an extant order of this Court must be obeyed or given effect to unless it has been varied or set aside by this Court and not even by consent can parties vary or depart therefrom. See *CFU v Muriro & Ors* 2000 (1) ZLR at p 405 (S).

It follows that the proceedings which took place in the High Court after the respondent had given his evidence in chief were a nullity for want of compliance with the order of this Court.

In the circumstances, having heard both counsel and considered their proposals on the way forward, we unanimously make the following order:-

1. The appeal is allowed.
2. The proceedings in the High court following the respondent's (plaintiff in the court *a quo*) evidence in chief are hereby declared null and void and accordingly set aside.
3. For the avoidance of doubt the order of divorce granted by the court *a quo* is set aside.
4. The matter is remitted to the High Court for continuation of the trial before the same judge.
5. The Registrar of the High Court is directed to set the matter down for hearing at the earliest possible date after 15 February 2014.
6. Both parties shall, within five (5) days of the date of this order, effect full discovery in terms of the Rules of the High Court.
7. The appellant (defendant in the court *a quo*) shall, within five (5) days of the date of this order provide the particulars requested for purposes of trial by the respondent (plaintiff in the court *a quo*) dated 28 February 2013.
8. There shall be no order as to costs.

GARWE JA: I agree

PATEL JA: I agree

Gill, Godlonton & Gerrans, appellant's legal practitioners

Manase & Manase, respondent's legal practitioners