

JOSHUA MATAMISA

Versus

MAVIS MATAMISA

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 19 JANUARY & 1 APRIL 2004

Judgment

CHEDA J: This is an appeal against the magistrate's court decision of 10 April 2001. The historical background of this matter is that the parties fell in love in 1988 and the union was customarily sealed by payment of *lobola* in 1990 and was then solemnised in terms of the African Marriages Act [Chapter 238]. This union was dissolved on 10 April 2001 with a satisfactory distribution of the movable property and order of the custody of the two minor children. Maintenance being also settled. The only contentious issue was that of the matrimonial home which the court had ordered that:

“The matrimonial home i.e. house number 20611 Pumula South in Bulawayo is not to be sold until the 2 minor children attain the age of 18 years i.e. the youngest attains the age of 18 years. The applicant will remain with the children at house No. 20611 Pumula South until Tanya turns 18 years. However, if applicant decides to re-marry before Tanya turns 18 years, the house will have to be sold and a court of law to determine the manner in which proceeds from its sale have to be shared between applicant and respondent.”

Mr *Dube* for respondent argued that the trial *a quo*'s ruling is defective as it failed to conclude the matter. He further argued that it would be fair for respondent to be awarded the matrimonial home or alternatively it be sold to best advantage with appellant being awarded 1/3 while respondent is awarded 2/3 of the net proceeds thereof.

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On the other hand Mr *Ndove* for respondent argued that this matter was concluded in that respondent should retain title of the house with respondent remaining in the house until the youngest child attains the age of 18.

The issue in my view is whether indeed the trial court made a definite conclusion. While it is clear that the title remains with respondent with appellant awarded a usufruct the matter is not concluded as the parties will have to go to court for the determination of the distribution of the net proceeds of the sale of the house. I agree with Mr *Dube* for appellant that there is a need for cases to be brought to finality. It is unnecessary for the parties to go back to court after so many years yet the court can make a final determination there and then. A final determination is absolutely necessary so as to put the parties' minds at rest.

It is not necessary for the matter to be referred back to the court *a quo* as this court has the power to substitute the court *a quo*'s decision.

In conclusion the appeal succeeds and the following order is made:-

1. Appellant shall remain in the house being number 20611 Pumula South, Bulawayo until the youngest child attains the age of 18.
2. Upon attaining this age the house shall be sold to best advantage and the net proceeds shall be shared as follows:
 - 2.1 Appellant 1/3 and
 - 2.2 Respondent 2/3
3. Each party to pay its own costs.

Moyo-Hara & Partners, appellant's legal practitioners
Dube & Associates, respondent's legal practitioners