

MORE NGWENYA

Versus

SIBUSISIWE NGWENYA

IN THE HIGH COURT OF ZIMBABWE
CHIWESHE J
BULAWAYO 10 & 20 MAY 2004

N Mathonsi for applicant
R Nyathi for respondent

Opposed Matter

CHIWESHE J: The parties were divorced by order of this court given on 27 February 2003 under case number HC 923/02. Paragraphs 7 and 8 of that order read as follows:

- “7. That the matrimonial home being number 2 Ashley Road, Queens Park West, Bulawayo shall be valued by a firm of estate agents mutually agreed between the parties to determine its value whereupon the plaintiff shall pay to the defendant 45% of the net value thereof in settlement of defendant’s claim to the house after which defendant’s share thereof shall be transferred to the plaintiff.
8. That in the event of the plaintiff’s failure to raise the monies due to the defendant in terms of paragraph 7 above within six months from the date of the agreed valuation of the matrimonial home then the said matrimonial home shall be sold and the net proceeds shared at a ratio of 55% to the plaintiff and 45% to the defendant.”

The parties are unable to agree as to which firm of estate agents to engage for purposes of evaluating the immovable property referred to in the above order. Each party has submitted valuations from estate agents of its own choice. The applicant (plaintiff in the divorce action) has submitted two valuations carried out by Knight Frank Estate Agents and John Pockock and Company respectively. Both estate agents put the value of the property at \$70 000 000,00 as at 10 December 2003 and as at 16 January 2004 respectively. On the other hand the respondent (defendant in the

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divorce action) has submitted two evaluations carried out by Holland and Redfern Estate Agents and C B Richard Ellis Private Limited. Holland and Redfern put the value of the property at \$160 000 000,00 as at 24 February 2004 whilst C B Richard Ellis Private Limited have returned the figure \$130 000 000,00 as of the same date.

It will be noted that the figures quoted by the firms approached by the respondent are double those quoted by the firms hired by the applicant. It has been suggested by the applicant that the figures obtained by the respondent have been inflated in order to secure an unfair advantage for the respondent. A similar accusation has been made in respect of the figures quoted by the applicant, namely that the figures have been played down for purposes of benefiting the applicant in the ultimate sums he is obliged to pay out to the respondent.

The parties' counsel have agreed that there are three options open to the court in resolving this impasse.

The first option is for the court to add up the figures given by the four estate agents and then divide that figure by four. The result would be the average of the four quotations. That average would then be taken as the true value of the property. Alternatively within that option the court could order fresh valuations by the four estate agents in order to obtain the current market values of the property. The average figure of the four valuations would then be deemed to be the correct and true value of the property. I do not however think that the option is ideal given the mistrust that presently exists between the two parties. I am inclined to the view that it is best that the companies engaged by the parties be excused from taking further part in this exercise.

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The second option is to refer the matter to trial or order that the court hears oral evidence regarding the true market value of the property. This option is in my view not preferable for the simple reason that it will have the effect of prolonging litigation and increasing costs.

The third option is to reject all valuations tendered and appoint a new and independent evaluator whose findings shall be final and binding on both parties. This appears to be the best option to adopt. Such an evaluator appointed by a person other than the parties themselves is likely to win the confidence and trust of both parties. His finding will be final and binding hence not subject to further litigation unless there is good cause shown for such further litigation.

Accordingly, it is ordered as follows:

1. The immovable property namely number 3 Ashley Road, Queens Park West, Bulawayo shall within thirty days from the date of this order be evaluated by a person (other than Knight Frank Estate Agents, John Pockock and Company, Holland and Redfern Estate Agents, C B Richard Ellis (Pvt) Ltd or their employees, nominees or appointees) appointed by the Estate Agents Council.
2. The result of the evaluation conducted by the person appointed in terms of paragraph 1 shall be final and binding upon the parties who shall on that basis proceed within 30 days of being furnished with such report to satisfy the requirements of paragraphs 7 and 8 of the judgment of this honourable court in case number HC-923-02 given on 27 February 2003.
3. The cost of the evaluation shall be borne by the parties in the following proportions – 55% by the applicant and 45% by the respondent.
4. Each party shall meet its own costs with respect the present application.

Maronedze, Nyathi, Majome & Partners, applicant's legal practitioners
Messrs Coghlan & Welsh, respondent's legal practitioners