

CHIPO MUUSHA
versus
GIFT SARUCHERA
and
REGISTRAR OF THE HIGH COURT

HIGH COURT OF ZIMBABWE
UCHENA J
HARARE, 24 February and 7 March 2012

Opposed Application

Miss V C Maramba, for the applicant
K Mawere, for the defendant

UCHENA J: The applicant was the plaintiff in an action she instituted for divorce and the distribution of matrimonial assets between her and the respondent who was then the defendant. Her prayer for divorce was granted. The distribution of their asset of value, house number 10 Save Road, Mabvuku was determined by GUVAVA J as follows:

- “2. The plaintiff is awarded a 50% share in the immovable property being number 10 Save Road, Mabvuku.
3. The property shall be valued by an independent evaluator appointed by the Registrar of the High Court from his list of valuers and the cost of valuation shall be shared equally by the parties.
 - (a) The valuation shall be carried out within two months of the date of this order.
 - (b) The defendant shall have the first option to buy out the plaintiff of her 50% share in the property within a month of the date of the valuation;
 - (c) In the event that the defendant fails to buy out the plaintiff of her 50% share in terms of this order the plaintiff shall have the right to

buy out the defendant of his 50% share within a month from the date that the defendant's right expires; and

- (d) Should both parties fail to buy out the other in accordance with the terms of this order the property shall be sold at best advantage and the net proceeds shall be shared equally between the parties.”

The judge's order is dated 16 October 2007. This means the valuation should have taken place within two months of that date and the buy out by the respondent within one month of the date of valuation and that by the applicant within one month of the respondent's failure to buy her out.

The applicant and respondent therefore failed to cause the valuation of their property in terms of para 3 (a) of Guvava J's order. The respondent also failed to comply with para 3 (b) of the order. The applicant, having failed, to comply, with para 3 (a) of the order belatedly, attempted to comply with para 3 (c) of the order about two years later in April 2009. The respondent with the assistance of a letter dated 22 March 2011 from an officer in the Registrar's office also belatedly attempted to overturn the applicant's attempts and himself attempted to comply with para 3 (b) of the order by paying the applicant's 50% share of the proceeds of the house into court on 26 April 2011. They are now fighting over whose, buying out of the other, should prevail. The applicant seeks an order ratifying her buying out of the respondent's 50% share of the house. The respondent opposes the applicant's application.

When the applicant belatedly attempted to buy, out the respondent and had paid his half share into court, she went on to effect certain improvements on the property. She now claims to have a better right and seeks the confirmation of her buying out the respondent. The respondent disputes that right and insists he is entitled to buy out the applicant and has also paid the applicant's half share into court. The respondent claims in his opposing affidavit to be entitled to the property in view of the letter written to him by Mr Antonio an officer in the Registrar's office on 22 March 2011. The letter reads as follows:

“In terms of High Court Judgment in HC 4502/06, paragraph 3 of the operational part entitles the Registrar to appoint a valuator.

A valuator was appointed and a copy of which is filed of record. In terms of paragraph 3 subsection (b), you are given the first option to buy out the plaintiff’s 50% share within a month of receipt of this letter and the valuation report”

The officer in the Registrar’s office, clearly wrongly interpreted the court’s order by giving the impression that the time limits imposed therein were of no consequence. He unlawfully extended the time within which the respondent was to act, to a month within his receipt of the officer’s letter, disregarding the time limits imposed by the judge who granted the order. He has no authority to disregard the court’s order, nor to extend the times within which the parties had to act. His only duty was to facilitate the implementation of the order as ordered by the trial court. He cannot amend the order or vary it. His actions were clearly outside the ambit of his authority and cannot validate the respondent’s claim to being the one who bought out the other in terms of the court order. He usurped the functions of a judge, which even a judge can only exercise on application by one of the parties.

Miss *Maramba* for the applicant does not dispute that both parties failed, to comply with GUVAVA J’s order, but states that they did not have money to cause the valuation of the property within the stipulated period.

Mr *Mawere* for the respondent also agreed that both parties did not comply with the court’s order. He further submitted that since both parties did not comply with the valuation clause they cannot implement the order granted without first seeking its variation or amendment.

Miss *Maramba* for the applicant agreed and suggested that the only way forward was for a fresh application for variation or amendment of the order to be made. I agree with her submission and would have expected her to withdraw the applicant’s application to pave way for the fresh application, but she said she could not do so as she did not have her client’s instructions to do so. She left it to the court to make a decision on that issue. This is a case where the applicant should have withdrawn her claim especially in view of

her claim that she made improvements to the property after she believed she had bought out the respondent, as those improvements have not been valued.

Court orders are made for the purpose of regulating the parties' determined rights. They must be complied with. When parties find themselves in circumstances where they are not able to comply with a court order in its present form their only remedy is in applying to the court for its variation or amendment. They cannot on their own seek to implement the order on terms other than those ordered by the court. Officers in the Registrar's office have no right to interfere with court orders and should not assist parties to implement court orders on terms other than those spelt out in the court order. Their duty is to implement court orders and not to alter them.

In the circumstances the applicant's application is dismissed with costs.

Thondhlanga & Associates, applicant's legal practitioners
Madanhi, Mugadza & Co Attorneys, 1st respondent's legal practitioners.