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Judgment No. SC 53/04

Civil Appeal No. 83/99

JUDITH MABABA MAPHOSA v  
GREEK NCUBE

SUPREME COURT OF ZIMBABWE  
CHEDA JA, MALABA JA & NDOU AJA  
BULAWAYO, MARCH 29 & SEPTEMBER 10, 2004

The appellant in person

*R Moyo-Majwabu*, for the respondent

CHEDA JA: The appellant once lived with the respondent as lovers who intended to marry. Although the appellant says they were married, this is not true. They never got married or took any steps to do so, either under the Marriages Act or under customary law.

The appellant suggested that their love affair just ended, but the respondent gave details of how it ended. He said the appellant had three other children about whom she never told him the truth. She even lied that one of them was the child of a deceased sister. When he eventually discovered the truth, she confessed in tears that they were all her children. The respondent decided after this discovery that he could not marry her anymore and that she should vacate his house. She gave excuse after excuse until it became clear that she had no intention of leaving the house. When the appellant realised that her excuses were no longer accepted by the respondent, she turned violent and became abusive towards the respondent. By this time the parties were using separate bedrooms.

The respondent made an application to the High Court to have the appellant evicted from the house. She was served with the papers but did nothing until a default judgment was entered against her. A warrant of eviction followed. Judgment was entered on 29 January 1993. Again she did nothing for some time. On 2 April 1993 the Deputy Sheriff served her with a notice of eviction. She did not do anything until 22 April 1993 when she filed an application for rescission of the

judgment. This application was withdrawn on her own instructions. Since then the matter has been to court, either at her instance or at the instance of the respondent, several times.

A number of orders have been issued against the appellant, all of which she has ignored, namely –

1. On 29 January 1993 she was ordered to vacate the house;
2. On 15 September 1994 she withdrew her application for rescission;
3. On 13 May 1995 an order for re-eviction was made after she had returned and broken into the house;
4. On 8 May 1998 the court refused to hear her as she was in contempt of the court order; and
5. On 24 March 1999 her application for rescission was dismissed.

As things stand, all these orders still stand against the appellant. If she is in the house at the moment, she is still liable to eviction.

I prefer to quote what KAMOGA J said in dismissing her application, against which dismissal she now appeals:

“The application is devoid of any merit. She does not deserve to be heard since she persistently defies the orders of this court.”

We accorded the appellant a hearing, but it became clear that she had no explanation or good ground for appealing against KAMOGA J’s judgment.

The appeal is dismissed with costs.

MALABA JA: I agree.

NDOU AJA: I agree.

*James, Moyo-Majwabu & Nyoni*, respondent's legal practitioners