

DISTRIBUTABLE (8)

**CRESSY MAGUMISE
v
ALPHEUS MAGUMISE**

**SUPREME COURT OF ZIMBABWE
ZIYAMBI JA, GWAUNZA JA & GUVAVA JA
HARARE, FEBRUARY 20, 2014**

Appellant in Person

Ms R.R. Mutindindi, for the respondent

GWAUNZA JA: This is an appeal against the judgment of the High Court handed down on 11 April 2013, in which a decree of divorce as well as certain ancillary relief was granted.

The appellant raised two (2) grounds of appeal;

- (i) that the court *a quo* erred in dismissing her claim to maintenance in the reduced sum of \$150.00 per month, and
- (ii) that the court erred in failing to award her a ½ (half) share in the matrimonial home, Stand No. 324/8 Mbizo Township, Kwekwe.

It is apparent from the record that the appellant, in her counter claim, did not claim a ½ (half) share in Stand No. 324/8, Mbizo Township. She claimed instead, the sum of \$2000.00 representing the improvements that she made to the house in question and was duly

awarded that sum by the court *a quo*. Accordingly that issue, not have been raised or considered in the court *a quo*, is not properly before us.

The sole issue to be determined therefore is that of maintenance. The appellant argues that the respondent is obliged to maintain her after divorce, on the basis of the marriage vows that he made and also because, due to a failed pregnancy that resulted in an operation, she was no longer able to support herself.

In considering the issue of maintenance, we found the following passage, taken from the head note in the case of *Chiomba v Chiomba* 1992 (2) ZLR 197 (S) to be quite instructive as well as apposite given the circumstances of this case;

“Marriage can no longer be seen as providing a woman a bread ticket for life. A marriage certificate is not a guarantee of maintenance after the marriage has been dissolved.

Young women who worked before marriage and are able to work and support themselves after divorce will not be awarded maintenance if they have no young children.”

The starting point *in casu* is that the court *a quo*, having heard the parties, found that the appellant was well able to look after herself as demonstrated by the fact that she looked after the matrimonial home and the plaintiff’s children from 2009, following the respondent’s departure from the matrimonial home. The court found that she was a cross border trader, a fact that was confirmed by her friend Nomatter Hodzi whose evidence was to the effect that they had been going together to Botswana from 2003 to 2011 for cross border

trading purposes. The court also took into account the appellant's evidence that the respondent was not permanently employed.

We are satisfied that, in arriving at its decision on the issue of maintenance, the court took into account all relevant considerations. No misdirection has been alleged nor is any apparent on the record. In addition, this Court does not find that there was any improper exercise of the court's discretion in arriving at its conclusion.

It is therefore our unanimous view that the appeal has no merit and ought to be dismissed.

As regards costs, we are of the view that in the circumstances, no order as to costs should be made against the appellant.

Accordingly, it is ordered as follows;

The appeal be and is hereby dismissed with no order as to costs.

ZIYAMBI JA: I agree

GUVAVA JA: I agree

Matsikidze & Mucheche, respondents' legal practitioners