

DIANA KUTSANZIRA

Versus

TITUS TSVANGIRAI

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 29 MAY & 2 JUNE 2011

Application for directives

KAMOCHA J: The parties in this matter appeared before a magistrate in the community court. The plaintiff was seeking a decree for divorce, custody and maintenance of the two minor children and a share of the property acquired during the subsistence of their unregistered customary law union.

The plaintiff listed in her declaration the property purchased during the unregistered union thus:

- 1) House number 5 Greystoke Road, Morningside, Bulawayo;
- 2) House number 5503 Luveve 4, Bulawayo;
- 3) House number 493 Elly Road, Killarney, Bulawayo;
- 4) Mark II Toyota vehicle registration number ZW 006087;
- 5) Mazda 323 Familia;
- 6) 3 bedroom suits;
- 7) 3 television sets;
- 8) Sofas;
- 9) Refrigerator;
- 10) Stove; and
- 11) Flea market stock

The defendant in his plea raised a point *in limine* that the plaintiff's claim was ill founded and not based on law and further pointed out the value of the property listed supra was in excess of the monetary jurisdiction of the magistrate sitting as a community court. These points were raised at the commencement of the trial.

There can be no doubt that the listed property far exceeds the monetary jurisdiction of the magistrate in particular the value of the three immovable properties. The parties should have instituted their proceedings in the High Court in respect of the distribution of the property.

Since the union of the parties was not registered the community court can adjudicate upon the marital relationship in terms of the proviso to section 16(1)(d) of the Customary Law and Local Courts Act [Chapter 7:05]. Section 16(1)(b)(ii) prohibits the Community Court from dealing with claims whose monetary value exceeds one hundred dollars (\$100). The plaintiff should not have instituted the proceedings in that court. It is specifically prohibited by law from doing so.

Plaintiff's claim for the maintenance of the two minor children should have been taken to the appropriate maintenance court.

After the defendant had raised the above points *in limine* and sought for a ruling from the community court the presiding officer held the view that the properties should first be evaluated before he could make an informed decision. That in, my view would not have been necessary at all because even the value of the movables alone without the 3 houses would far exceed a hundred dollars.

The parties, through the clerk of court of the community court, forwarded the record of proceedings to the Registrar of this court to be placed before a Judge for directives. These are they.

Directives

1. The dispute relating to the marital relationship of the parties i.e. whether or not they should part ways should be adjudicated upon by the local court in terms of section 16(1)(d) of the Customary Law and Local Courts Act [Chapter 7:05].
2. The claim of maintenance of the two minor children should be dealt with by an appropriate maintenance court.
3. The distribution of the property allegedly purchased by the parties when they lived together should be adjudicated by the High Court.

Kamocha J