

REGINA CHIOTA  
versus  
JOSEPH K CHIOTA

HIGH COURT OF ZIMBABWE  
MUNGWIRA and UCHENA JJ,  
HARARE, 9 October 2003 and 18 February 2004

Civil Appeal

Mr *F G Gijima* for the appellant  
Mr *C Maunga* for the respondent

MUNGWIRA J: The appellant and respondent were in 1982 married in terms of the African Marriages Act [*Chapter 238*].

In 1995 the respondent instituted proceedings for divorce and ancillary relief. The respondent's claim having been dismissed, an appeal was noted with the District Court.

It would appear from perusal of the record of proceedings that after the grant, in 1997, of an order condoning the late noting of that appeal that there was entered a consent judgment whereby a decree of divorce was granted and the issues relating to the ancillary relief were remitted to the magistrate's court for determination.

At the subsequent hearing the presiding magistrate granted amongst other things an order relating to the division of the matrimonial home. It is against the portion of the order which deals with the division of the matrimonial home that this appeal has been lodged.

Before I proceed to address the issue before this court I find myself constrained to remark upon the paucity of documentation, and that is assuming that we have before us a complete account of all court proceedings from the inception of the action for divorce, surrounding the circumstances of the grant of the divorce order.

It would however seem that the parties were then and are still in agreement that the order was for all intents and purposes valid and in accordance with their respective wishes and that they have in the preceding 7 to 8 years conducted their affairs as a divorced couple. I would therefore deem the proceedings to have been proper.

The second point I would make is with regard the manner in which the notice of appeal is framed.

Order 31, Rule 2(4) of the Magistrate's Court (Civil Court) Rules S.I. 290 of 1980 which lays out the requisite content of a notice of appeal provides as follows:

- "(4) A notice of appeal or of cross-appeal shall state
- a) whether the whole or part only of the judgment or order is appealed against and, if part only, then what part; and
  - b) the grounds of appeal specifying the findings of fact or rulings of law appealed against".

When it was drawn to Mr *Gijima's* attention that the notice of appeal was so shoddily framed that at most and that from a generous standpoint, the only criticism of the magistrate's judgment is the aspect of the extent of the share awarded to the appellant in other words that the grounds of appeal do not attack the decision of the magistrate with regard to the disposal of the property, he was adamant that the grounds of appeal were adequately stated but failed to justify this assertion.

I am satisfied in regard to the method of the disposal of the matrimonial home that this issue is not properly before us and that as such this court has no basis for interfering with the magistrate's determination on that point. I would however wish to emphasise the importance of drafting carefully notices of appeal and the need to ensure compliance with the rules as it is not unknown that defective notices of appeal have in the past resulted in failed appeals.

Our task in as far as the division of the matrimonial home is concerned has been made easier in that at the onset of the hearing we were informed that the respondent and the appellant had reached agreement that the property be divided equally between the parties. This agreement is much in line with any order this court might have made on the merits and an order in that form is accordingly granted.

In the result the appeal succeeds to the extent that paragraph 3(b) of the order of the court *a quo* is altered to read :

"That the appellant, Rendai Chiota is awarded 50% of the net proceeds of the sale of Stand No. 4100 Glen Norah A and the respondent Joseph K Chiota is awarded 50% thereof."

In consequence of this order it therefore follows that wherever the figures "60%" and "40%" appear in paragraph 3 of the original order these figures are to be deleted and substituted by the figure of 50%.

The appellant is awarded the costs of the appeal.

**UCHENA J, agrees.**