

GIFT SARUCHERA
versus
CHIPO MUUSHA

HIGH COURT OF ZIMBABWE
UCHENA J
HARARE, 4 and 20 February 2014

Opposed application

Applicant in person

P. Musendo, for the respondent.

UCHENA J: The applicant and the respondent were husband and wife who divorced in proceedings presided over by GUVAVA J (as she then was). They were each awarded a 50% share of their matrimonial home. The applicant was given an option to buy out the respondent's share, failing which the respondent would exercise the same option. In the event of both parties failing to buy out the other the house was to be sold and the net proceeds would be shared equally between the parties. They both failed to comply with the terms of the order granted by GUVAVA J on 13 September 2007, but sought to buy each other out through the unlawful assistance of court officials. They both paid money into court for purposes of buying out the others share of their former matrimonial home Number 10 Save Road Mabvuku. Their failure to comply with the order was in respect of the time within which the house was to be valued and the time frames within which the applicant was to buy out the respondent's share and the respondent was to buy out the applicant's share if he failed to buy her out.

Both parties still want to exercise the right to buy out the other. They can only do so if the order is varied to enable them to have the house valued within the time to be ordered by the court and exercise the option of buying out the other within the time to be ordered by the court. The order granted by GUVAVA J (as she then was) is still capable of being implemented if the parties were willing to have the house sold so that they could share the proceeds. They both do not want the house to be sold. They want a chance to buy out the

other. The respondent wants to be given the first option to buy out the applicant. She argues that the applicant lost his chance to buy her out. That is correct but she too lost her chance to buy him out and resorted to underhand dealings with court staff to buy him out which was nullified by the order I granted in HC 118/12.

The justice of this case can be met by simply varying the time frames of GUVAVA J's order, by giving them a fresh starting point. There is no need for any other alteration. The party who will be able to comply with the order will get the house. They are simply being allowed to do what they should have done in terms of GUVAVA J's order.

The valuation on file is too old to reflect the current value of the house. I will therefore order a revaluation within the same time frame as had been given by GUVAVA J.

I therefore make the following order;-

1. No 10 Save Road Mabvuku Harare shall be valued by an independent evaluator to be 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 done within two months of the date of this order.
- (b) The applicant shall have the first option to buy out the respondent's 50% share in the property within a month of the date of the valuation.
- (c) In the event that the applicant fails to buy out the respondent's 50% share in terms of this order the respondent shall have a right to buy out the applicant's 50% share within a month from the date the applicant'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.
- (e) The parties shall equally contribute towards the costs of the previous valuations.

Messrs Kamusasa & Musendo, respondent's legal practitioners.