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Judgment No. SC 25/09
Civil Appeal No. 6/07

AIDAN PAUL BECKFORD v ELIZABETH ANNE BECKFORD

SUPREME COURT OF ZIMBABWE
SANDURA JA, ZIYAMBI JA & GWAUNZA JA
HARARE, NOVEMBER 26, 2007 & APRIL 27, 2009

A P de Bourbon SC, with him *E T Matinenga*, for the appellant

J C Andersen SC, with him *J B Colegrave*, for the respondent

SANDURA JA: On 20 December 2006 the High Court granted a decree of divorce and other ancillary relief in a divorce action in which Mr Beckford was the plaintiff and Mrs Beckford the defendant. Aggrieved by part of the order, Mr Beckford appealed to this Court.

The Notice of Appeal, in relevant part, reads as follows:

> "The appellant appeals against paragraphs 2, 3, 9, 10, 12 (only insofar as it relates to the respondent), 14, 15 (insofar as the time for payment by the appellant is required), 16, 17, 18, 19 (only insofar as it imposed upon the appellant the obligation to deliver such property to the respondent at his cost), 22 and 23 of the Order given by the High Court of Zimbabwe."

Before the appeal was heard Mrs Beckford filed a court application in this Court for leave to adduce further evidence on appeal. The evidence consisted of the following - (a) the evidence presented by her as to the re-mortgaging and the sale-in-execution of the property at 45 Leinster Avenue, London; (b) the record in the urgent Chamber application filed by her in the High Court in case no. HC 1417/2007, an application for an order preventing the sale-in-execution of the property at 45 Leinster Avenue, London, and which was dismissed on 24 March 2007; and (c) the correspondence that passed between the legal practitioners for Mr and Mrs Beckford after 24 March 2007.

The application for leave to adduce further evidence on appeal was opposed by Mr Beckford. However, as this appeal can be determined without the need for the additional evidence sought to be introduced, it will not be necessary for this Court to deal with the application.

The parties were married to each other in Blackpool, Lancashire, England, on 26 November 1994. Two children were born of the marriage. These are Elsbeth Bridie Beckford, born on 7 August 1996, and Theodore Hugh Beckford, born on 9 February 1999. Both children were born in the United Kingdom.

At the pre-trial conference the issues were identified as follows –

> "1. Whether it is in the best interests of the minor children that custody be awarded to (the) plaintiff or (the) defendant, or that an award of joint custody be made.

2. Dependent upon the award of custody the quantum of maintenance payable in respect of the children.

3. What order should be made in respect of the children's schooling?

4. The quantum of maintenance payable by (the) plaintiff to (the) defendant and the period thereof;

5. What assets constitute the matrimonial estate?

6. The apportionment thereof;

7. Costs."

After a trial which lasted eight days the learned trial Judge prepared a long judgment in which he carefully considered the issues before him.

I now wish to consider those paragraphs of the order of the court *a quo* which are challenged on appeal, and determine whether the learned trial Judge erred in any way.

PARAGRAPH 2

In terms of this paragraph, the learned trial Judge granted the custody of the two minor children of the marriage to Mrs Beckford. In this regard the learned Judge relied mainly on the evidence of Mrs Beckford and that of Mr Jean-Francois Desvaux de Marigny ("Mr de Marigny"), a clinical psychologist with much experience in the psychological aspects of custody of and access to minor children after divorce.

Although Mr Beckford originally sought sole custody of the two minor children, he finally sought joint custody of them. However, Mrs Beckford, who sought sole custody of the children, maintained that joint custody was a practical impossibility in this case because it would not work. The learned Judge found that Mrs Beckford gave her evidence well and was an honest and fair witness.

In his evidence Mr de Marigny said that although joint custody was the "first prize" if it was a practical possibility, he did not believe that the necessary ingredients for joint custody, such as trust and the ability to communicate with each other in a mature manner, existed in this case. It was his view that Mrs Beckford was the more appropriate custodian of the two parties.

The learned Judge accepted Mr de Marigny's evidence and commented as follows at pp 38-39 of the cyclostyled judgment (judgment no. HH 124-2006):

> "I have dealt at length on Mr Marigny's testimony because, in my view, it was delivered in a professional and impartial manner. His opinion was based on a credible methodology. He conducted in depth interviews with a wide array of collaterals, the plaintiff, the defendant, the children and Dr Bester … . He carried out a first class appraisal of the issues and the facts. He was alive to the thirteen criteria for custody considerations set out in *McCall v McCall* 1994 (3) SA 20 (C) (*sic*) at 204-205 and the views expressed by DE VOS J, in *Krugel v Krugel* 2003 (6) SA 220 (W), on joint custody.
>
> He was commissioned by the plaintiff. He conducted himself well and with dignity in the witness-box. …
>
> I am satisfied that he told the truth. I believe his evidence in its totality."

It is pertinent to note that in the Heads of Argument prepared on behalf of Mr Beckford, no challenge is made to Mr de Marigny's evidence and his reports. That, in my view, supports the learned Judge's view of the manner in which Mr de Marigny gave his evidence and the substance of that evidence.

The learned Judge made adverse findings on the credibility of Mr Beckford and his two witnesses, Mr Austin and Mrs Middleton, on the issue of the custody of the minor children.

Commenting on Mr Beckford's evidence, the learned Judge said the following at p 43 of the cyclostyled judgment:

> "The plaintiff's conduct after he filed for divorce both before and after the consent order painted him as a manipulator. He manipulated his character, his wife's character, his money and the prevailing circumstances to his advantage. His evidence failed to convince me that the defendant was unsuitable to wear the mantle of a custodian parent."

Mr Austin was the managing director of the company which operated Heritage Primary School, the school at which the two minor children were pupils. When Mr Austin was cross-examined it emerged that Mr Beckford had provided a pavilion for the benefit of the school. It was also significant that when Mr Beckford was seeking sole custody of the children he was supported by Mr Austin, and that when he shifted his ground and sought joint custody of the children, Mr Austin similarly shifted his ground and supported him. In the circumstances, the learned Judge concluded that Mr Austin could not escape from the criticism that he was biased in favour of Mr Beckford.

Mrs Middleton, the headmistress of Heritage Primary School, was similarly found by the learned Judge to have given evidence which was biased in favour of Mr Beckford. The learned Judge was of the view that Mrs Middleton had allowed herself to be "manipulated" by Mr Beckford.

It is quite clear that the learned Judge made specific findings of fact with regard to the credibility of the parties and their witnesses. As has been stated in a number of cases, an appellate court would not readily interfere with such findings. That is so because the advantage enjoyed by a trial court of observing the manner and demeanour of witnesses is very great. See *Arter v Burt* 1922 AD 303 at 306; *National Employers Mutual General Insurance Association v Gany* 1931 AD 187 at 199; and *Germani v Herf and Anor* 1975 (4) SA 887 (AD) at 903 A-D.

It seems to me that in the present case there is no basis for interfering with the learned Judge's findings of fact on the credibility of the parties and their witnesses in respect of the custody of the minor children. There is, therefore, no basis for interfering with the order granting the custody of the two minor children to Mrs Beckford.

PARAGRAPH 3

In terms of this paragraph the learned Judge granted to Mrs Beckford leave to remove the minor children from Zimbabwe to the United Kingdom permanently on or after 31 July 2007.

In granting this order, the learned Judge said the following at pp 50-51 of the cyclostyled judgment:

> "The defendant sought to remove the minor children permanently from Zimbabwe after 31 July 2007. The plaintiff who submitted that it was premature to seek such relief did not seriously oppose it.
>
> In her testimony the defendant justified the need to prepare the girl for middle school in England. She demonstrated that she did not have any support system in this country. She also cited the deteriorating economic environment in this country.
>
> In paragraph 15 of his draft order, the plaintiff postulates the possibility of either party relocating to the UK with the minor children, with the consent of this court. It is clear to me that at one point the plaintiff contemplated such a move. The defendant would like to do so. She has taken into account the recommendation of the educationists and Mr de Marigny. The plaintiff has already prepared the children for relocation by showing them a house they may live in (in) the UK. That the children have lived in Zimbabwe for the greater part of their existence is not in doubt. They were both born in the UK. Indeed, after the defendant conceived the boy, the parties temporarily moved to the UK for her to be closer to both their families. Clearly the parties have close links to the UK and have always contemplated the possibility of going back home."

In my view, the learned Judge's reasoning is unassailable. It was common cause that Mrs Beckford, a qualified graphic designer, did not have a work permit in respect of Zimbabwe, and could not support herself or the children in this country. The need to relocate to the United Kingdom was, therefore, obvious. Having been awarded the custody of the minor children, it followed that the children had to go with her.

PARAGRAPHS 9, 10 AND 12

These paragraphs read as follows:

"9. The plaintiff shall pay the following household and other expenses incurred in the running of 62A Steppes Road, Chisipite, Harare, direct to the suppliers thereof strictly by due date: electricity, water, rates, Tel-One telephone account, vet bills, DS TV subscriptions, insurance of house and contents, third party insurance, licensing and reasonable maintenance and repairs costs together with the procurement and payment of 200 litres of diesel per month of the motor vehicle in the defendant's possession, security guard costs, wages of two domestic workers at the prescribed rate.

10. The plaintiff shall pay maintenance for the defendant and the children in the sum of ZW$30 000 per month (as revalued at 1 August 2006) with effect from 1 September 2005, such maintenance to be subject to review every three months by reference to the increase in the Consumer Price Index for the preceding three months produced by the Central Statistical Office.

11. …

12. The plaintiff shall at his cost retain the children and the defendant on a local medical aid scheme and pay all medical and dental shortfalls incurred under such scheme and furthermore the plaintiff shall be solely responsible for any emergency medical treatment the defendant and the children may require outside the country."

Paragraph 12 was challenged by Mr Beckford only insofar as it related to Mrs Beckford.

In terms of the provisions of para 14 of the order granted by the learned Judge, paras 4 to 13 only applied during the period that Mrs Beckford and the children were in Zimbabwe pending their permanent relocation to the United Kingdom. Therefore, Mr Beckford's obligation to meet the expenses set out in paras 9, 10 and 12 applied during that period only.

It is pertinent to note that the provisions in paras 9, 10 and 12 are the same as those in paras 7, 8 and 10 of the order granted by the High Court on 26 July 2005 with

the consent of Mr and Mrs Beckford ("the consent order"), apart from the fact that in para 9 of the order of the court *a quo* there is the additional requirement that Mr Beckford was to purchase 200 litres of diesel per month for use by Mrs Beckford.

The consent order regulated, *inter alia*, custody of, access to and maintenance for the minor children, as well as Mrs Beckford's maintenance, until the conclusion of the divorce proceedings. In addition, the consent order provided that Mr Beckford was to vacate the matrimonial home at 62A Steppes Road, Chisipite, Harare, and that he was to continue paying all the household and other expenses incurred in the running of the matrimonial home.

In granting the orders set out in paras 9, 10 and 12 the learned Judge had this to say at pp 51-53 of the cyclostyled judgment:

> "The defendant sought maintenance for her and the children and prayed that it be regulated in terms of paras 7, 8, 9, 10 and 11 of the consent order until her departure to the UK. …
>
> She seeks that for as long as she remains in Zimbabwe her personal maintenance should be regulated in terms similar to those found in the consent order. I see no reason to discard her reasoning as it is based on a workable, tried and tested formula which has been in operation since 26 July 2005. That formula takes into account the loss in the value of our currency. …
>
> The defendant is not able to work in this country. Throughout the greater part of her marriage she has been supported by the plaintiff. She has established the need for personal maintenance. I will thus make an order for her personal maintenance in the terms that she seeks.
>
> The plaintiff has accepted that he be bound by (the) consent order on the maintenance of the minor children. That concession is noted and an award along those lines will be made.

> The other issues that relate to the educational, medical and holiday needs of the children were agreed to by the parties in their respective counsels' submissions. These will be regulated, as agreed between the parties, in terms of the consent order of 26 July 2005.
>
> The defendant co-joined her claim for maintenance with a prayer that the plaintiff be ordered to supply her with 200 litres of diesel every month until she relocates to the UK. The plaintiff did not seriously contest her claim in this regard. His only concern was that the cost of the diesel be incorporated into one lump sum monthly figure. … She highlighted the agony she faces in searching for fuel and compared it with the ease with which the plaintiff manages to acquire it. She further stated that the price of fuel is always changing, hence the formulation of her claim in the manner that she did.
>
> It seems to me that since the order of maintenance that I will make will be in terms similar to those that are found in the consent order and, since the maintenance order and her request for fuel are for the limited duration of her stay in this country, I will accede to her prayer for the delivery of 200 litres of diesel to her every month."

In my view, the learned Judge's reasoning is unassailable. Consequently, I cannot see any basis for interfering with paras 9, 10 and 12 of the order of the court *a quo*.

PARAGRAPH 14

This paragraph reads as follows:

> "Clauses 4 to 13 of this order shall only apply during the period that the defendant and the children remain in Zimbabwe pending their permanent relocation to the United Kingdom, and thereafter the plaintiff's rights of access to the minor children and the rights of the minor children and the defendant to maintenance shall be by agreement between the parties or failing which by order of a court of competent jurisdiction."

In my view, it seems clear from the wording of paras 4 to 13 of the order that these paragraphs were meant to be operative only during the period that

Mrs Beckford and the minor children were in Zimbabwe before their permanent relocation to the United Kingdom. Paragraph 14 merely reinforces that.

For example, in terms of para 4 of the order, in respect of which there was no appeal, Mr Beckford was to vacate the matrimonial home, and Mrs Beckford and the children were to have the unfettered right to continue living in the matrimonial home. It goes without saying that the unfettered right to live in the matrimonial home could only be exercised by Mrs Beckford and the minor children before their permanent relocation to the United Kingdom.

By providing, in para 14, of the order, that after Mrs Beckford and the minor children have permanently relocated to the United Kingdom, Mr Beckford's rights of access to the minor children, and the rights of the minor children and Mrs Beckford to maintenance would be by agreement, failing which by order of a court of competent jurisdiction, the learned Judge in the court *a quo* took into account the fact that after Mrs Beckford and the minor children have permanently relocated to the United Kingdom different considerations would apply to the issues of Mr Beckford's right of access to the children, and the rights of Mrs Beckford and the minor children to maintenance.

Once again, I find the learned Judge's reasoning unassailable. There is, therefore, no basis for interfering with para 14 of the order.

PARAGRAPH 15

This paragraph reads as follows:

"Upon the permanent departure of the children and the defendant in terms of clause 3 of this order –

15.1 The house situated at 62A Steppes Road, Chisipite, Harare, or the shares in the company holding such property, shall be valued within thirty days of this order by an independent valuer to determine the likely market value of the shares or the property, and the plaintiff shall elect within fourteen days of such a determination whether to sell the shares or the property or to do neither.

15.1.1 If the shares (are) or the property is sold, the defendant shall receive 50% of the gross proceeds of the sale (less any assessed payment in respect of capital gains tax and the cost of the independent valuer).

15.1.2 If the plaintiff elects not to sell (the) shares or the property, he shall pay to the defendant 50% of the market value of the shares or the property within thirty days of such a determination by the valuator, whichever is the greater, as assessed by the independent valuer (less the costs of the independent valuer).

15.2 The defendant shall sell the contents of this property for their market value and the proceeds of the sale shall be divided equally between the parties."

Mr Beckford's objection to para 15 of the order was set out by his counsel, Mr *de Bourbon*, in paras 38 and 39 of his Heads of Argument as follows:

"38. Although para 15 of the order … seems to deal with the disposal of the matrimonial property at 62A Steppes Road, Chisipite, Harare, as at the date of the permanent departure of Mrs Beckford and the children to the United Kingdom, the learned Judge directed the valuation to take place within thirty days of the order, and required Mr Beckford to make an election within fourteen days of the determination of the value as to whether to sell the shares or the property or do neither. He gave no reason for this direction, nor why (that) could not take place closer to the time of the departure of Mrs Beckford.

39. But, more importantly, the learned Judge directed in para 15.1.2 … that having made the election (in effect within forty-four days of the judgment) he then had to pay half the value of the shares or the property to Mrs Beckford within a further sixteen days if he elected then not to sell the shares or the property.

It is respectfully pointed out that this leads to the absurd position that within forty-four days of the judgment Mr Beckford must decide whether upon the eventual departure of Mrs Beckford and the children to the United Kingdom he is going to sell the shares or the property, and if he made the decision at that point in time not to sell, then within a further sixteen days he must pay half the value to her, even though she continues to live in Zimbabwe and might never leave."

In the circumstances, Mr *de Bourbon*, quite correctly in my view, submitted that in para 15.1 the learned Judge should have directed that the valuation of the immovable property at 62A Steppes Road, Chisipite, Harare, or the shares in the company holding such property, was to be carried out, not within thirty days of the order, but within thirty days of the permanent departure of Mrs Beckford and the minor children for the United Kingdom. Mr *Andersen*, who appeared for Mrs Beckford, did not disagree with that submission.

Paragraph 15.1 will, therefore, be amended accordingly.

PARAGRAPHS 16, 17, 18 AND 19

These paragraphs read as follows:

"16. The plaintiff shall transfer against payment by him of the transfer costs his rights, title and interest in the property situated at 45 Leinster Avenue, London SW14 7JW, Title Number SGL 67648, to the defendant free of any encumbrances, mortgages or other obligations duly existing or duly registered by law over the property.

17. The plaintiff shall transfer against payment by him of the transfer costs his rights, title and interest in the property situated at 390 Sutton Road, Sutton, SM3 9PH, Title Number SGL 637408, held under the name of Glencora Resources Limited to the defendant free of any encumbrances, mortgages or other obligations duly existing or duly registered by law over the property.

18. The defendant shall receive all the funds presently held in a bank account in the joint names of RBM Davies and Partners, and Fladgate Fielder Solicitors, such funds being the net proceeds of the sale of the property at 265 Lonsdale Road, Barnes, London SW139QL.

19. The defendant be and is hereby awarded all the movable items that were formerly at the Lonsdale Road, Barnes, London, property and it is further directed that they shall be delivered by the plaintiff at his cost to such address as may be designated by her in London."

Paragraph 19 was challenged by Mr Beckford only insofar as it imposed upon him the obligation to deliver the property to Mrs Beckford at his cost.

Thus, in terms of paras 16 to 19 of the order Mrs Beckford was awarded – (1) the immovable property at 45 Leinster Avenue, London ("the Leinster property") free from encumbrances and mortgages; (2) the immovable property at 390 Sutton Road, Sutton ("the Sutton property") free from encumbrances and mortgages; and (3) the net proceeds from the sale of the immovable property at 265 Lonsdale Road, Barnes, London, and all the movable items that were formerly at that property.

In arriving at these awards the learned trial Judge was guided to a great extent by his findings of fact in respect of the credibility of Mr Beckford on the one hand, and the credibility of Mrs Beckford on the other hand.

Commenting on the credibility of Mr Beckford on the issue of his assets, the learned trial Judge said the following at p 68 of the cyclostyled judgment:

> "It seemed to me that the plaintiff was an evasive and dishonest witness. He simply was not prepared to disclose his assets fully. I agree with (the) observations of Mr *Andersen* that the plaintiff was an utter liar who manipulated the situation and avoided producing documents such as the completion statements. He appeared bent on denying the defendant her entitlement."

On the other hand, the learned trial Judge commented as follows on the credibility of Mrs Beckford at p 76 of the cyclostyled judgment:

> "In my estimation, she was an honest and credible witness …".

It is significant that these findings were not challenged on appeal. In any event, an appellate court would not readily interfere with findings of fact made by a trial Judge. See, for example, *Arter v Burt* s*upra* at 306; *National Employers Mutual General Insurance Association v Gany supra* at 199; and *Germani v Herf and Anor supra* at 903 A-D.

In my view, there is no basis in the present case for interfering with the findings of fact made by the learned trial Judge on the credibility of the parties. No such basis was established by Mr Beckford.

Having rejected Mr Beckford's evidence in respect of the proprietary rights of the parties, the learned trial Judge said the following at pp 81-82 of the cyclostyled judgment:

"I, however, find that the plaintiff did not disclose all his assets and income, especially after he instituted these proceedings. The consequences of his attitude are summed up in the English Court of Appeal by BUTLER-SLOSS LJ in *Baker v Baker* ([1995] 2 FLR 829 (CA)) at page 835, in these words:

> 'Mr Posnansky pointed to an utterly false case and asked us to consider why the husband was lying and what did he have to hide. If the cupboard was bare, it was in his interests to open it and display its meager contents. But on the contrary, the husband, despite his protestations to the contrary, continued to live the life of an affluent man. I agree with the submissions from Mr Posnansky that if a court finds that the husband has lied about his means, and failed to give full and frank disclosure, it is open to the court to find that beneath the false presentation, and the reasons for it, are undisclosed assets.'

I will use this fact against him in distributing the assets that he disclosed. It is fair, just and equitable that I award to the defendant all the money that is held in the joint account of their respective English solicitors. I have agonized over the appropriate order to make concerning the distribution of the immovable properties that the plaintiff disclosed which are registered in England.

In making the order that I have come to, I have been influenced in great measure by the plaintiff's failure to make full and frank disclosure, the size of the business transactions that were carried out by Coralsands and the concomitant income that must have accrued to him, the benefit that accrued to him from the disposal of 7A Granville Road to Nicky Morris on 10 November 2005, the concerted programme that he undertook in asset stripping the matrimonial estate to his benefit and to the impoverishment of the defendant of which the registration of a charge in favour of his parents for £67 000 against 390 Sutton Common Road was part of, his financial acumen and resourcefulness and his apparent disdain for the integrity of the legal process. I will order that the two disclosed properties be transferred into the defendant's name while the plaintiff shall remain responsible for the discharge of all the encumbrances, such as the mortgages and restrictions registered against them."

The issue which now arises is whether there is any basis for interfering with the proprietary awards made by the learned trial Judge in favour of Mrs Beckford in terms of paras 16 to 19 of the order. I do not think there is.

In *Baker v Baker supra* OTTON LJ, who concurred with BUTLER-SLOSS LJ who prepared the main judgment, said the following at 837:

> "Accordingly, the husband cannot complain if the Judge following authority explored what was before him and drew inferences which may turn out to be less fortunate than they might have been had he been more frank and disclosed his affairs more fully. Such inferences must be properly drawn and reasonable. On appeal it may be possible for either party to show that the inferences or the award were unreasonable in the sense that no Judge faced with the information before him could have drawn the inferences or awarded the figures that he did. I am satisfied that the appellant has not succeeded in demonstrating that the figures WARD J awarded were in any regard unreasonable or unjustified." (emphasis added)

In the present case, I am not prepared to say that no Judge could have drawn the inferences or made the awards made by the learned trial Judge. There is, therefore, no basis for interfering with the awards made.

It was submitted by Mr *de Bourbon* on behalf of Mr Beckford that the law governing the distribution of the matrimonial assets was the law of Zimbabwe, and not the law of England, and that the learned trial Judge was mistaken as to what the English law on the distribution of matrimonial assets was. However, this submission is at variance with the submissions made by the same counsel in the court *a quo*.

It was common cause in the court *a quo* that English law should be applied. In fact, in his Heads of Argument in the court *a quo*, counsel set out what the English law on the issue was, and made the following submission, which appears at p 512 of Vol II of the record:

> "It is respectfully submitted that if this Honourable Court decides to apply the law of England, then a 50:50 split of the value of assets shown in Exhibit 6 can be made only if this Honourable Court finds that the defendant could not have done more to create or contribute to the matrimonial estate."

Stating the English law on the distribution of matrimonial assets, the learned trial Judge said the following at p 79 of the cyclostyled judgment:

> "… a spouse needs only to show that he or she could not have done more than he or she did to create or contribute to the matrimonial estate, before he or she can be awarded at least a one-half share in the estate.

In the circumstances, I am satisfied that the learned trial Judge properly applied the English law governing the division of matrimonial assets.

PARAGRAPHS 22 AND 23

These paragraphs read as follows:

> "22. The plaintiff's claim be and is hereby dismissed.
>
> 23. The plaintiff shall pay the defendant's costs of suit including any costs reserved for determination in this matter, and the qualifying fees and expenses of Mr de Marigny."

The reasons for granting these two orders were set out by the learned trial Judge at pp 82 and 83 of the cyclostyled judgment as follows:

> "It seems to me that the two most contentious issues between the parties revolved around custody and the disclosure of matrimonial assets. The defendant's case on both these issues has largely been vindicated. She has not been in employment for the past nine years and has been dependant on the plaintiff for her livelihood except for the period from April 2003 to July 2005 when she survived on the largesse of her parents and grandmother. It was also

essential that she call the expert opinion of Mr de Marigny, which was invaluable to this court in the determination of the custody issue.

In my view, she is entitled to her costs of suit for both the main and counter-claims, including the qualifying expenses of Mr de Marigny.

It is for these reasons that I would dismiss the plaintiff's claim."

In my view, the learned trial Judge's reasoning cannot be faulted. In any event, as far as the issue of the costs of suit is concerned, this is a matter within the discretion of the learned trial Judge.

In the circumstances, the following order is made –

1. Subject to paragraph 2 below the appeal is dismissed with costs.

2. Paragraph 15.1 of the order of the court *a quo* is amended so that it reads as follows –

> "The house situated at 62A Steppes Road, Chisipite, Harare, or the shares in the company holding such property, shall be valued within thirty days of such departure by an independent valuer to determine the likely market value of the shares or the property, and the plaintiff shall elect within fourteen days of such a determination whether to sell the shares or the property or to do neither."

ZIYAMBI JA: I agree

GWAUNZA JA: I agree

Honey & Blanckenberg, appellant's legal practitioners

Atherstone & Cook, respondent's legal practitioners