IN THE SUPREME COURT OF ZAMBIA **Appeal No. 222/2015**
HOLDEN AT NDOLA
(Civil Jurisdiction)

B E T W E E N :

PENELOPE CHISHIMBA CHIPASHA MAMBWE **APPELLANT**

AND

MILLINGTONE COLLINS MAMBWE **RESPONDENT**

Coram: **Mambilima CJ, Malila and Musonda, JJS on 4th September, 2018 and 7th September, 2018**

For the Appellant: Ms. K. N. Kaunda of Mmes KN Kaunda Advocates

For the Respondent: In person

J U D G M E N T

Malila JS, delivered the ruling of the court.

Cases referred to:

1. *Access Financial Services Limited and Access Leasing Ltd v. Bank of Zambia (2012/HP/871)*
2. *Kabwita and Others v. NFC Africa Mining Plc (2011/HK/164)*
3. *Phiri v. Zulu (2008/HP/A70) (2012) ZMHC 47*
4. *Febian Ponde v. Charity Bwalya, Appeal No. 51/2011*
5. *Fribance v. Fribance (1957) 1ALL ER 357*
6. *Mathews Chishimba Nkata v. Ester Dolly Mwenda Nkata [SCZ Appeal No. 60/2015]*

Legislations referred to:

1. *Matrimonial Causes Act No. 20 of 2007*
2. *English Matrimonial Causes Rules (1973)*
3. *Halsbury's Laws of England 4th ed. (reissue) para 1129*
4. *Halsbury's Laws of England Vol. 13, 4th ed (reissue)*
5. *Order 3 Rule 2 of the High Court Act, Chapter 27 of the laws of Zambia*

This appeal challenges a ruling of the High Court given on 22nd October, 2015 following an application by the appellant to enforce a consent order relating to property settlement, custody and access to the children as well as maintenance of the children of the family.

The factual background is plain. The appellant and the respondent were once husband and wife. Their marriage was solemnised on 18th April, 1991. The appellant successfully petitioned for dissolution of marriage on grounds of unreasonable behaviour and desertion. To put matters in perspective, the respondent did not contest the petition although he claimed it contained falsehoods as the appellant, in her adulterous ways, was the villain of the piece and betrayer of his trust.

A decree absolute was issued on 6th August, 2002.

In November 2002, the appellant filed into court a notice of application for ancillary relief under rule 49 of the Matrimonial

Causes Rules 1972. Of moment to the present appeal is paragraph 9 of the supporting affidavit, which contains the following averment:

> *"That I contributed financially and in kind to the home and hence I am entitled to a share in the matrimonial home. This being so, the court should order that my beneficial share in the matrimonial home be apportioned to me and that the Title Deeds if ready should be rectified accordingly. If not, it should be ordered that the Title Deeds should reflect my name."*

It appears, at any rate from the record, that the respondent did not file any affidavit in opposition to that application. In any case the application for ancillary relief was not determined as the parties opted instead to file a consent order on 23rd June, 2003 in terms of which they reflected their wishes as follows:

1. *That the property settlement ratios in the property known as and situate at No. 3 Luputu Close, CEC Village, Nkana East, Kitwe be 75% the respondent and 25% the petitioner.*

2. *That the petitioner shall be entitled to the net sum of K1.6 million from quarterly rentals paid in respect of the said property. The said sum is receivable and only applies in respect of the current tenancy and the same shall be effective on the next payment due.*

3. *The petitioner and the respondent shall have joint custody of the children of the marriage and the petitioner shall have actual custody of Changwe Mambwe while the respondent will have actual custody of Mwelwa Mambwe and Chipasha Mambwe.*

4. *That each party shall have generous access to the children not under their actual custody.*

5. That each party will bear their own legal costs.

It is apparent from the documents in the record of appeal that following the conclusion of the consent order in the terms we have already reproduced, the appellant's personal circumstances changed. She remarried and settled not very far from the respondent's abode. The respondent's social circumstances also subsequently changed, and so did his attitude towards the consent order. He paid the appellant her portion of the rent based on the property ownership ratios agreed in the consent order for the first two quarters after the execution and filing the same and discontinued accounting to the appellant for rent obtained from the property from then on. He found another lover and entered into a fresh matrimonial union. The lease of the house terminated and the respondent started residing in it with his new spouse together with the two children of the family under his custody in accordance with the consent order.

Later in time, he stopped providing for the maintenance of the children in his custody who, at the time of the application before the lower court, were in tertiary institutions. He rebuffed demands for their maintenance made by the appellant through her advocates.

One of the two children who went into the respondent's actual custody in accordance with the consent order, developed a psychiatric condition in the nature of phobias with paranoid ideation and had to be put on regular medication. Over and above all this, the respondent banished the two children from his house on account of what he considered was a failure on their part to recognise and respect his new spouse. In his words, the two children were the authors of 'mayhem' at his home, and this had the potential of impairing his matrimonial harmony.

It is the foregoing facts which motivated the appellant to apply, by summons dated 10th February, 2015, for enforcement of the consent order. The summons was expressed to have been made under section 55(1)(a), (b) and (d) of the Matrimonial Causes Act No. 20 of 2007. It was supported by an affidavit which set out some of the issues as we have already narrated them.

The appellant also filed skeleton arguments before the learned High Court judge. The respondent, perhaps in typical style, did not file any affidavit in opposition to the application and did not attend the hearing of the matter either.

The learned High Court judge proceeded to hear the appellant in the absence of the respondent and later delivered the ruling which is now being assailed in this appeal.

In her ruling, the learned judge pithily observed that although the application was structured in the form of a request for enforcement of the consent order, it sought to incorporate a totally new relief not contemplated in the consent order. There was, according to the learned judge, no agreement, at least in the consent order sought to be enforced, to have the matrimonial home valued and the proceeds shared. She declined to entertain that portion of the application.

Moving to the prayer by the appellant for the respondent to render an account of the proceeds of the lease of the property from January, 2004 to the date of the desired order, the learned judge agreed that such account should be rendered before the Deputy Registrar and the respondent ordered to pay whatever would be found outstanding to the appellant.

As regards the issue of maintenance of the children of the family, the judge noted that the consent order had made no provision

as to maintenance but merely referred to custody. In any case, section 55(1)(a), (b) and (d) of the Matrimonial Causes Act, had nothing to do with maintenance of children of the family following a divorce. She accordingly declined to make the order in the manner requested.

The appellant is disenchanted with the ruling of the High Court and has now come to this court, urging us to interfere with that ruling on the following three grounds:

1. *The court below erred in law and fact when it refused to order the valuation and sale the matrimonial property House No. 3, Luputu Close, CEC Village, Nkana East, Kitwe and held that the parties did not agree on such when the parties had by consent agreed on the percentages relating to their respective interest in the said property.*

2. *The court below erred in law and fact when it failed to consider the fact of both parties' remarriage and the respondent's cohabitation in the matrimonial home House No. 3, Luputu Close, CEC Village with his current spouse.*

3. *The court below erred in law and fact when it declined to hear the application for custody and maintenance of the children of the then family and proposed that the same be heard by the Deputy Registrar.*

Written heads of argument were filed by both parties prior to the hearing. When the matter came up for hearing, the parties adopted

and placed reliance on those heads of argument, which they supplemented with oral submissions.

In regard to ground one of the appeal, it was contended on behalf of the appellant, that the court's refusal to entertain the application to have the matrimonial property valued and sold so that the proceeds are shared in the ratios envisaged in clause 1 of the consent order, was a misdirection. This was because, as the record shows, following the grant of the decree order nisi, there was an application for property settlement on the basis of which the parties settled the consent order already referred to. We were referred to section 24(1) of the Matrimonial Causes Act 1973 and para 1129 of *Halsbury's Laws of England* 4th ed. (reissue) both of which deal with the property to which a party to a marriage is entitled either in possession or in reversion. Those passages provide that property provision for the benefit of a party to the marriage or the children of the family may be made to the satisfaction of the court.

The short point counsel made was that in terms of the consent order, the parties had agreed on the share ratio of the matrimonial house in clear terms with the appellant being entitled to a 25% share.

Granted that the property was no longer on rent, she is unable to receive rental benefits, but is nonetheless still entitled to get a benefit representing her share in the property. Counsel also cited section 55(1)(b) of the Matrimonial Causes Act No. 20 of 2007 on the essence of property settlement. We shall later in this judgment reproduce the provisions of that section.

According to the appellant's learned counsel, the only way the appellant could have the benefit of her 25% share in the property was by liquidating it through a sale following a valuation. It was also submitted that there was no possibility of the respondent buying out the appellant as he had categorically indicated in his letter of 5th February, 2015 that he was not in gainful employment.

Counsel for the appellant further submitted that it was wrong for the lower court to have interpreted the consent order narrowly so as not to include the necessary powers and inferences that clause 1 imported, namely, to value, sell and share the arising proceeds in the ratios indicated in the consent order. We were thus urged to uphold ground one of the appeal.

Under ground two, counsel for the appellant invoked the spirit of justice. She argued that the learned High Court judge was under a duty to do justice by appraising the implication of the fact that both parties had remarried, and yet, the respondent was living with his new spouse in what was previously the parties' matrimonial house.

It was contended that by occupying the matrimonial house with his new spouse, the respondent was getting a 100% benefit of the property when there is absolutely no justification for the appellant to be deprived of her 25% share in it. The justice of the situation, according to the appellant, required that parties who had each since remarried were at the very least held to their respective share of the property as set out in the consent order. We were referred to *Halsbury's Laws of England* Vol. 13, 4th ed (reissue) on capital assets and remarriage where it is stated that:

> *"so far as capital assets are concerned, there is no reason for reducing a wife's share, she has earned it by her contribution in looking after the home and caring for the family."*

Counsel argued, we suppose in the alternative, that even if the court below was of the view that the appellant was making an application for enforcement of a relief not covered in the consent order, it was

under a duty to do justice based on the circumstances of the case. She cited the High Court judgment of *Access Financial Services Limited and Access Leasing Ltd v. Bank of Zambia*[1] and quoted long passages from there. We do not, for reasons that will become clear shortly, intend to reproduce those passages here. We must however state right away that this authority is of very limited value, persuasive or otherwise to this court.

Counsel ended her arguments on ground two on a rather potentious note. She claimed that the court below had inherent jurisdiction to hear applications before it notwithstanding that it is moved under a law that does not apply.

The third and final ground of appeal impugns the court's refusal to hear the application for maintenance of the children of the family, with the court suggesting instead, that the application be made to the Deputy Registrar.

The learned counsel recited paragraphs 4 to 6 of the appellant's own summons for enforcement of the consent order before referring us to paragraphs 15 to 23 of the appellant's affidavit in support. Those paragraphs effectively contain a narration of what transpired

and why the appellant wanted the relief she was seeking in the application.

The learned counsel submitted that the ruling of the lower court to the effect that section 55(1) of the Matrimonial Causes Act has nothing to do with maintenance of the children after a divorce, was incomprehensible. According to the learned counsel, the appellant had made it very clear that the consent order made no express application for maintenance of the two children. What was being made before the lower court was an express application for the maintenance of the two children of the family agreed to be in the custody of the respondent.

Ms. Kaunda also submitted that a court should not even grant a decree absolute if no arrangements for the maintenance of the children have been made. In the present case, a mistake was made and it was presumed to have been covered by the parties as incidental to the custody of the children. All that the appellant sought to do was to ensure that the court makes an express order that the respondent assumes the responsibilities which he had undertaken in the consent order to shoulder, but has now abandoned.

Ms. Kaunda then went on a submission expedition where her arguments became less coherent. She accused the lower court judge of having held that the appellant's application had nothing to do with maintenance of children *after divorce* and yet she was obliged under Order 3 Rule 2 of the High Court Act, chapter 27 of the laws of Zambia, to do justice. She claimed that under Rule 92(1) of the English Matrimonial Causes Rules, which still applied in our jurisdiction, applications relating to the custody or education of a child ought to be made to a judge. She also adverted to section 75 of the Matrimonial Causes Act, which provides that in any proceedings in which an application has been made with respect to custody, guardianship welfare, advancement or education of the children, the court shall have regard to the interest of the children as the paramount consideration.

In our view, all these arguments orbited outside the substratum of the appellant's case as defined in her grounds of appeal and are accordingly out of focus.

Ms. Kaunda also made other submissions which do not, in our view, take the appellant's case any further.

Mr. Mambwe, acting in person, filed what appear to us to be home grown heads of argument in response, attached to which were exhibits.

In reacting to ground one, he submitted, in support of the lower court, that a consent order, being a manifestation of the will of the parties, cannot be tempered with lightly. He referred us to the case of *Kabwita and Others v. NFC Africa Mining Plc*[2], a decision of the High Court, and quoted a statement from the judgment of Mulongoti J, as she then was. He also cited another High Court case of *Phiri v. Zulu*[3] for which he gave no citation to support the submission that where a spouse buys a property intended for common use, the other spouse cannot, by that act alone, acquire proprietary interest in the property of whatever description unless he or she can demonstrate that he or she has beneficial interest in the property.

We have previously stated that in keeping with the fundamental common law principles of *stare decisis* and judicial precedents in an environment such as ours which is replete with both binding and persuasive case authorities of superior courts, it may well be a misapplication of intellectual effort to attempt to persuade us

through High Court decisions, unless there is paucity of authorities on a novel point. This is not the case here. Notwithstanding this observation, we apprehend the argument that the respondent made under ground one as disputing the appellant's entitlement to a share in the matrimonial house. He claims that during the subsistence of their marriage, to use his own words, "the parties to the marriage went on several separation periods due to the appellant's adulterous life and cohabitations with various men and therefore, negligibly contributed to the home." His submission, in a nutshell, was that the property in issue was not acquired with the contribution of the appellant.

Under ground two, the respondent submitted that the 25% share of the appellant in the subject house has not been diluted as alleged. According to him, it was not unreasonable for the respondent to move into the matrimonial home with the children. The consent order did not prevent the respondent from doing so either.

Mr. Mambwe argued that the consent order does not stop either party from remarrying. However, the consequences of doing so are

outlined in section 59(3) of the Matrimonial Causes Act which he quoted as follows:

> *"If after the grant of a decree dissolving or annulling a marriage either party to that marriage remarries, that party shall not be entitled to apply, by reference to the grant of that decree, for financial provision order in the party's favour, or for a property adjustment order, against the other party to the marriage."*

He contended that the application by the appellant to convert the 25% share in the property into monetary value well over ten (10 years after remarrying and without special circumstances, is statute barred and should not be entertained.

The respondent once again referred us to more High Court judgments before submitting that there was no evidence to show that the appellant was physically impaired, in hardship, or otherwise prevented from claiming rental payment for the past twelve (12) years. He argued that as the claim was statute barred, it should not be entertained.

Reacting to ground three, the respondent supported the lower court's holding that the application for custody and maintenance ought to have been heard by the Deputy Registrar. Because by her own admission, the appellant agrees that the consent order made no

provision for the maintenance of all the three children of the family although custody and access were addressed, the respondent argued that the court below was right to hold as it did.

At the hearing, we sought clarification from Ms. Kaunda as to whether clause 1 of the consent order was intended to be read in the context of the succeeding clause relating to the splitting of rental income between the appellant and the respondent. Counsel maintained that clause 1 was a stand-alone provision. Mr. Mambwe was, however, emphatic in his submission that clause 1 was related to clause 2 and that both related to rent receivable from the property and no more. That rent was specific to the tenancy subsisting at the time of the consent order.

We have carefully considered the documents on file and the submissions of the parties. We propose to deal with the grounds of appeal in their reverse order of recall. In other words, we chose, for our own convenience, to deal with the third ground first and end with the first ground.

Under the third ground, we ask whether the lower court can be faulted for declining to hear the application for maintenance of the children.

The basis upon which the court below declined to consider the application was two-fold. First, that the consent order had made no provision for maintenance, but merely referred to custody. Second, that section 55(1) of the Matrimonial Causes Act, had nothing to do with maintenance of children following a divorce.

Regarding the first issue, it is beyond argument that the application before the court was chiefly for enforcement of the consent order entered into between the parties. The terms of that consent order have been reproduced early on in this judgment. The appellant sought through that application to have the respondent held to comply with, and to respect the undertakings he made under the consent order, which, in the nature of things, has the weight of a court judgment.

We note from the summons, however, that the appellant was not only asking for enforcement of the consent order but also for the court "to provide for the maintenance of children of the family

pursuant to section 55(1)(a), (b) and (d) of the Matrimonial Causes Act No. 20 of 2007.

Ignoring for a moment the latter part of the summons asking the court for maintenance provision, it is quite clear to us that the consent order as formulated did not provide for maintenance. None of the five paragraphs of the consent order which we reproduced earlier in this judgment, speaks to the issue of maintenance of the children specifically. To be clear, clause 1 relates to the so-called property settlement ratios, which are the subject of the first ground. Clause 2 relates to the rental income receivable from the property by the appellant. Clause 3 deals with the custody of the three children of the family while clause 4 concerns generous access to the children. Clause 5 deals with costs.

In her submissions, Ms. Kaunda took two totally conflicting positions regarding the issue of maintenance and the consent order. She argued in one breath that the issue of maintenance was subsumed in the clause relating to the custody for the children, which was expressly covered in the consent order. In another breath, she contended that "the appellant had made it very clear that the

consent order contained no express provisions for maintenance of the children of the family. What was being made was an express application for the maintenance of the two children of the family..."

We are for our part, perfectly satisfied that the learned judge in the court below could not, under the guise of determining an application to enforce specific provisions in the consent order, veer off into determining a substantively new matter of maintenance, unrelated to the subjects covered in the consent order. The judge cannot, therefore, be faulted for declining to entertain the application for maintenance of the children on the basis of the consent order.

As we have earlier on stated, however, the consent order was not the sole basis for moving the court to consider the issue of maintenance. There were also specific provisions of the Matrimonial Causes Act cited in the summons. These were section 55(1)(a), (b) and (d). That section enacts as follows:

> *"55(1) The court may, upon granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter, whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute, make any one or more of the following orders.*

(a) An order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as the court may specify in the order for the benefit of such child, such property to which the first mentioned party is entitled, either in possession of reversion;

(b) An order that settlement of such property as may be specified, being property to which a party to a marriage is entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family as either or any of them;

(c) ...

(d) An order extinguishing or reducing the interest of either of the parties to the marriage and settlement;

Subject, in the case of an order made under paragraph (a) to the restrictions imposed by this Act on the making of order for the transfer of property in favour of children who have attained the age of twenty-one."

For good measure, we must mention that the marginal notes to section 55 state that "Property adjustment orders in connection with divorce proceedings."

More recently in *Febian Ponde v. Charity Bwalya*[4] we observed that property adjustment is universally understood to mean allocation of one or more properties among family assets to provide for a divorced person. There is therefore a marked difference between property adjustment and maintenance.

Ms. Kaunda cited section 55(1)(a), (b) and (d) as grounding her application for maintenance. It does not require esoteric interpretation to understand that section 55 of the Matrimonial Causes Act is confined to property adjustment which is totally different from maintenance. Although, indeed, a judge has power to consider maintenance applications under section 56 of the Act on a proper application, the judge will have to be properly moved to do so. It behoves the movant of such an application to package the application in a manner that conforms with the Matrimonial Causes Act and any applicable rules. It is not sufficient that a power to entertain an application exists.

Frankly Ms. Kaunda's arguments around the issue of maintenance were not worth much of her time, let alone that of this court. They are without merit. Ground three cannot therefore succeed. It is dismissed accordingly.

Turning to ground two, the grouse of the appellant's grievance is that justice demands that as both parties have remarried, they should each be entitled to the benefit of the matrimonial property in the ratios suggested in the consent order.

We understand Mr. Mambwe's argument on this issue to be that the share of the appellant's rental income mentioned in clause 2 of the consent order was intended to be some form of financial provision for her which, in the order of things, abated when she remarried.

Our view is that ground two is intrinsically linked to ground one so that whatever our decision will be under ground one, will have an over-bearing impact on the issue in ground two.

Turning to ground one of the appeal, the issue as we see it, has to do with the construction to be placed on clause 1 of the consent order. We have to consider whether the ratios apportioned to the parties in the property were intended to represent their share of the rental income, or were in fact, the ownership interest of the two in the property, so that the rent sharing ratio mentioned in clause 2 reflected that ownership.

Our observation is that the consent order is vague in its terms on these two issues. Had the clause been drafted with greater care and precision, the present dispute would probably not have arisen.

Mr. Mambwe argued that the appellant was not entitled to the share in the matrimonial property because she did not earn it, given

the perennial differences which had characterised their marriage and the frequent separations. The appellant on the other hand has sworn that she made considerable in-kind contribution toward the acquisition of the property and is thus entitled to a share of it. We take the liberty to explain the position of the law as it relates to adjustment of matrimonial property on dissolution of marriage.

In this jurisdiction, as in many others in the commonwealth, the prevailing position is that a spouse who contributes either financially or in-kind to the home earns an interest in the property of the family acquired during the subsistence of the marriage. In numerous authorities, the holding has been consistent that family property should be shared on a 50/50 basis.

In *Fribance v. Fribance*[5], Lord Denning sitting in the Court of Appeal of England in holding that in-kind contribution of a spouse to property acquired during a marriage was sufficient to entitle the spouse to a share of that property, asserted as follows:

> "*In the present case, it so happens that the wife went out to work and used her earnings to help run the household and buy the children's clothes, whilst the husband saved. It might very well have been the other way round... This title to the family assets does not depend on how they happen to allocate their expenditure. The whole of their resources were expended for*

their joint benefit... And the product should belong to them jointly. It belongs to them in equal shares."

We reiterated the same position in *Fabian Ponde v. Charity Bwalya*[4] where we stated that it does not matter that no financial contribution was made by both spouses to the purchase or development of the property of the family: what matters is that the parties to the marriage made contributions either materially or in kind towards the property.

Although indeed many marriages are built on happiness and mutual support, there are still many others where one spouse may be perpetually wasteful, uncooperative, distant and providing absolutely no warmth of companionship let alone financial contribution. It is debatable whether such spouses should be taken to have earned the entitlement to 50% share of the property of the family at dissolution of the marriage.

In *Mathews Chishimba Nkata v. Ester Dolly Mwenda Nkata*[6] we made the following pertinent observation:

"If the basis of sharing family property is that both spouses contributed to its purchase or creation it should follow that where it can be demonstrated that one spouse invested nothing (financially or in-kind) in the acquisition of the property, they should technically not be entitled to a share of what was

in fact an investment by the one spouse on the basis only that they had entered into a marriage. Our view is that property settlement should be undertaken on the basis of fairness and conscience, not on an unjustified reference to the 50:50 dogma. In our opinion, the sharing of matrimonial property should not reside in a fixed formular in law. It should not be a matter of mathematics as simply in splitting a piece of land into two equal portions. Equal rights between husbands and wives do not necessarily translate, in every case, into equal portions of family property..."

In the same case, we went on to observe that:

"Where the respondent shows that the applicant for property settlement was in fact the number one hindrance to the acquisition of the property and that such property was acquired in spite of, rather than with the help of the applicant, such evidence can scarcely be ignored in making property adjustment for the parties. Resort to the 50:50 philosophy in sharing such property would clearly be a naked affront to the justice of the situation in those circumstances."

We are of course mindful that we are here not dealing with an appeal arising from a decision on a property settlement application. We have already stated that there was none made. There was instead an agreement reduced into a court order under which the parties short-circuited the procedure for obtaining an order for property adjustment. They agreed of their own volition on how they were to share the property.

The parties themselves agreed on the share ownership in the property which assigned less than the proverbial 50% ownership to the spouse – i.e. the appellant. Should such agreement not be enforced? We think it should. The parties ought to give effect to their own intention clearly expressed in an order of court.

They had intended to apportion ownership of the property in the ratios stated in clause 1; not for the purpose of sharing rental income as argued by Mr. Mambwe. Even if we were to assume that the consent order was capable of two interpretations, namely one placed on it by the appellant, and the other placed on the same clause by Mr. Mambwe, we would be fortified in relying on the interpretation least favourable to Mr. Mambwe. This is due to the operation of the *contra proferentem* rule which requires that where a document is open to two interpretations the ambiguity should be resolved against the party that drew up the document. In this particular case, the consent order in question was drawn by Messrs MNB Legal Practitioners on behalf of Mr. Mambwe.

We hold, therefore, that the parties' interests in the matrimonial property as expressed in clause 1 of the consent order ought to be

given effect. Ground one, and by extension, ground two of the appeal succeed to the extent indicated.

There are of course various permutations available to the parties to realise their expressed intentions. It is not for this court to direct them on what modality is to be employed to actualise clause 1 of the consent order as we have interpreted it.

We make no order as to costs.

.....
I. C. Mambilima
CHIEF JUSTICE

.....
M. Malila
SUPREME COURT JUDGE

.....
M. Musonda SC
SUPREME COURT JUDGE