

IN THE SUBORDINATE COURT OF THE FIRST CLASS 2017/CRMP/LCA/227

FOR THE LUSAKA DISTRICT

HOLDEN AT LUSAKA

(Appellate Jurisdiction)

BETWEEN:

BAHATI AMANI

APPELLANT

AND

UMUREWA DIDACIENNI

RESPONDENT

BEFORE: MAGISTRATE G.MASLUMANI SENIOR RESIDENT MAGISTRATE

JUDGMENT

This is an appeal by Bahati Amani from Kanyama local court. He was dissatisfied with the Judgment of the court below which ordered K800 child maintenance.

When the matter came up for hearing, I heard evidence from the parties only. The evidence in brief establish that the parties lived together for not less than one year. They had one child which is still a baby in laps. There is evidence to the effect they had intended to graduate their love affair to a marriage but things could not work.

From the evidence adduced, the dispute is mainly on the quantum awarded by the court below for child maintenance.

The appellant has raised the following arguments:

- (i) That the court below did not take into account that on 13/5/2017 three days before he received summons in this action, he gave the respondent a sum of K10,000 to start a business with which to support the child.
- (ii) That he has a wife and 4 other children to look after.
- (iii) That he is not in employment and have to pay rent. He has urged the court to reduce the quantum to K300 per month.

The argument raised by the respondent on her part is essentially that at the time they lived together, he found him with nothing but had 2 shops by the time she left. She had to leave because he used to cause a lot of hardships to her. From what I find, the respondent has shown that she contributed to the appellant's seemingly sound financial status. He acquired the shops while living with her thereby contributing in kind. So, much as she was not a spouse entitled to an equal sharing at the incidence of divorce as held in *Chibwe v Chibwe* (2001) ZR, she is entitled to a reasonable share in terms of equity.

This approach is well supported by section 15 of the Subordinate Act Cap 28 V.3 of the Laws of Zambia. To this effect, the assertion that she was given K10,000 before suit cannot hold. I treat that as a share of what she contributed to his acquisitions. This has to be separated from child maintenance. The first argument fails.

Turning to the second and third arguments of other commitments, vis-à-vis the aspect of another wife, 4 children, payment of rent and not being in formal employment, it is my considered view that the appellant ought to have known the responsibility that comes with fathering a child. He cannot raise the issue of being not in formal employment when he has a business and must have foreseen the responsibility which comes with a child.

In the light of the foregoing, I will and do hereby dismiss the appeal for lack of merit. K800 child maintenance is not too high a sum for a man who runs a shop business. Costs to follow the event.

DELIVERED AT LUSAKA IN OPEN AT THIS 20TH DAY OF JULY, 2017



HON G. MALUMANI ESQ

SENIOR RESIDENT MAGISTRATE

20/07/2017

