

Vitsitsi v Vitsitsi

Summary

Court:	Supreme Court Of Appeal
Bench:	The Honourable Justice Mtambo, SC, JA, The Honourable Justice J Kalaile SC JA, The Honourable Justice Tembo, SC, JA
Cause Number:	MSCA Civil Appeal Number 4 of 2002
Date of Judgment:	October 07, 2003
Bar:	Makhalira, Counsel for the Appellant Respondent, unrepresented

The Appellant appealed against a decision by a single member of the Court to dismiss her application for a stay of an order that had discharged an ex parte injunction. The dispute arose from the Respondent's decision to rent out the matrimonial home, a property of which he was the registered proprietor. The family had several other houses, including one owned by the Appellant which she rented out. The Appellant commenced legal proceedings seeking a declaration of beneficial ownership or, alternatively, a share of the proceeds from the sale of the house. She also sought an injunction to prevent her eviction. The Appellant was successful in obtaining an ex parte injunction.

The Respondent subsequently applied for and obtained a discharge of the injunction on the grounds that the Appellant had failed to make full and frank disclosure of material facts in her ex parte application. Specifically, she had lied about not having alternative accommodation, when the family had other properties. Following the discharge, the Appellant applied for a stay of the discharge order, which was also dismissed. The appeal rested on two grounds: that the single judge's ruling was against the weight of the evidence and that he erred in not applying the provisions of the Marriage Act and the Married Women's Property Act 1882.

The Court dismissed the appeal. It found that the evidence from the children of the marriage was correctly ignored as it did not assist in determining the core issue of whether the injunction was obtained through full and frank disclosure. The Court further held that the matter was not governed by the Marriage Act or related legislation but rather by the principles relating to ex parte applications. The Court reiterated that a party seeking a discretionary remedy ex parte is under an obligation to make the fullest possible disclosure of all material facts. The Court concluded that the Appellant had failed in this duty by making an untrue statement regarding her accommodation and, therefore, was not entitled to the advantage she had gained from the injunction. The Court dismissed the appeal with costs.