

SARAH ZIMBANDE
versus
GIBSON KAHOMWE

HIGH COURT OF ZIMBABWE
MAKONI & UCHENA JJ
HARARE 23 July and 18 September 2013.

Civil Appeal

Appellant in Person

Respondent in Person

UCHENA J: The appellant appealed against the decision of a Magistrate who ordered her to return the cattle, goats and money which had been attached in execution to satisfy a judgment which had been granted in her favour by the Chief's court. The respondent, who was the appellant in the Magistrate's court, opposes the appellant's appeal.

The facts which gave rise to the dispute between the parties are as follows. The respondent's son, who was aged 25 at the time the parties appeared before the Chief's Court and 26 when they appeared before the magistrate, had impregnated the appellant's deceased young sister's daughter, who she was staying with. She had caused the girl to elope to Langton the respondent's son. Langton who is not employed stays with his parents. The girl therefore had to elope to the respondent's home. The respondent did not accept her. His son who was accepting liability, had because of his father's objection, to report the dispute to the Chief's court which found in the appellant's favour.

It is common cause that the Chief forced the respondent to pay on behalf of his son. On page 27 of the record of proceedings before the Magistrate the appellant had the following exchange with the respondent's counsel;

“Q Saying he did not want his son to marry your daughter?
A Home refusing but forced by law”.

Further down the same page the exchange continued as follows;

“Q Chief forced him to pay?
A Yes
Q Not willing to pay but forced by Chief?
A Yes he was forced to pay”.

This exchange settles the appeal. A father was forced to pay for his son's wrongdoing. He appealed to the Magistrate's court which upheld his appeal. The Magistrate ordered that

the cattle, goats and money, which had been attached in execution of the Chief's order should be returned to the respondent. He on page 36 of the record ordered as follows;

“The court will order plaintiff to return the bovines, goats and money to the defendant. She must get her bovines, goats and money from Langton who damaged her daughter.”

The Magistrate's judgment is sound and consistent with the law. A father cannot be ordered to pay for the delicts of his adult child. The appellant's appeal is therefore dismissed with costs.

Appellant appeared in Person

Respondent appeared in Person.