

REPORTABLE (1)

JULIUS TAWONA MAKONI

v

PAULINE MUTSA MAKONI

**CONSTITUTIONAL COURT OF ZIMBABWE
MAKARAU JCC, GOWORA JCC & PATEL JCC
HARARE: 11 NOVEMBER 2025 & 20 JANUARY 2026**

W. Ncube and L. Madhuku, for the applicant

T. Mpfu and K. Madzika, for the respondent

PATEL JCC: This is an application for direct access in terms of s 167(5)(a) of the Constitution of Zimbabwe, as read with r 26 of the Constitutional Court Rules, 2025 (the Rules). The application before the Court impugns the decision of the Supreme Court (the court *a quo*) on the basis that it infringed the applicant's constitutional rights, particularly the right to equal protection of the law under s 56(1) and the right to a fair hearing under s 69(2) of the Constitution.

The Background

The applicant and the respondent were married in Zimbabwe in terms of the Marriages Act [Chapter 37] on 31 December 1983. During the subsistence of the marriage, the parties acquired various properties in Zimbabwe and in England. The applicant, a banker, established himself in both Zimbabwe and England. In 2006, he went into self-exile in England. On 20 December 2010, the respondent petitioned the courts in England to grant her a decree of divorce as well as ancillary relief.

The decree of divorce was granted and the English Court awarded the respondent ownership of the London matrimonial home, the Harare matrimonial home at No. 5 Rietfontein Close in Chisipite and a vacant stand in Shawasha Hills, Harare, together with all household chattels in the London home, except for the applicant's personal items. The applicant, on the other hand, was awarded extensive assets, including the Omega Cottages in Nyanga, substantial shareholdings in National Merchant Bank of Zimbabwe Limited, a commercial bank in Zimbabwe, and several London and Harare properties. These included 172 Campden Hill Road, 17 Oak Lodge, a Northfields apartment, Grandi Lodge and Nyenyedzi. He was also awarded significant offshore funds held in Credit Suisse Zurich as well as Barclays Bank (British Virgin Islands) and Barclays (Jersey) accounts, containing hundreds of thousands of pounds. In granting the order, the English Court expressed its displeasure at the applicant's conduct, finding that he had not been candid with the court regarding all the property owned by the parties.

The order was granted on an interim basis and the applicant had the option of challenging the interim relief before it became final. However, the applicant did not exercise that option. Instead, he applied for leave to appeal against the decision. The court granted this application on condition that he pay the respondent's lawyers a certain sum of money and sign transfer documents to serve as security, leaving the date blank, before leave to appeal was granted. The applicant did not comply with the requisite conditions.

Proceedings in the High Court

The applicant subsequently instituted proceedings in the High Court, seeking a declaratory order to the effect that a portion of the judgment delivered by the court in England was incapable of enforcement in Zimbabwe on the ground that it was contrary to public policy. Specifically, he challenged the award of the Harare matrimonial home, situated in Chisipite, to

the respondent. He contended that this award rendered him homeless and offended against the principles of equity and fairness set out in s 7 of the Matrimonial Causes Act [*Chapter 5:13*] and ss 26 and 74 of the Constitution.

In response to the foregoing application, the respondent filed a separate application seeking the registration, recognition and enforcement of the order made by the English court. She argued that the foreign court was a superior court of competent jurisdiction, that its judgment was final and conclusive and that nothing in its order contravened the public policy of Zimbabwe. The two matters were subsequently consolidated and heard together by the High Court.

In the High Court, the respondent argued that the applicant's claim for a declaratory order was legally unfounded, as the law does not allow any challenge of a foreign award before its registration. She maintained that the English Court had proper jurisdiction since both parties had submitted to it and that its decision, partly based on the applicant's non-disclosure of assets, was fair and consistent with s 7(4) of the Matrimonial Causes Act.

The applicant, in his heads of argument, argued that the English Court lacked jurisdiction because the parties were married and domiciled in Zimbabwe. He further claimed that the English judgment violated public policy by unfairly depriving him of all immovable property and leaving him destitute.

The High Court accepted the applicant's submissions and ruled in his favour. It held that the English Court lacked jurisdiction because the respondent had not proved that the applicant was domiciled in England. The court reasoned that, since the applicant's domicile of origin was Zimbabwe and no proof was furnished to show that he had abandoned it, the English court's jurisdiction was not established. Furthermore, the court found that the distribution of all known properties to the wife was contrary to Zimbabwean public policy, as it disregarded

the considerations mandated by s 7(4) of the Matrimonial Causes Act. Consequently, the High Court granted the declaratory order sought by the applicant, declaring the award of the Harare matrimonial home unenforceable in Zimbabwe. It simultaneously dismissed the respondent's application for registration and enforcement of the English judgment, ordering her to bear the costs of suit.

Proceedings before the Supreme Court

Dissatisfied with the decision of the High Court, the respondent appealed to the court *a quo*. In her grounds of appeal, she argued that the High Court had erred in determining the issue of jurisdiction when it had not been pleaded by the parties and in further finding that the judgment by the English court offended public policy. She contended that the English court had proper jurisdiction, that its decision was fair and consistent with Zimbabwean law and that the High Court's decision effectively kept the parties married contrary to their intention and the undisputed English decree absolute. She further argued that the High Court had misdirected itself in holding that one spouse must necessarily be awarded an immovable property upon divorce, a principle unknown to the law.

Per contra, the applicant supported the High Court's reasoning, arguing that the English court lacked jurisdiction to deal with property situated in Zimbabwe and that the award was unfair and inconsistent with local law. In its analysis, the court *a quo* held that the High Court had grossly misdirected itself by addressing the issue of jurisdiction when it was not raised in the pleadings. The applicant's own founding affidavit and draft order accepted the jurisdiction of the English Court and merely attacked the fairness of the property award.

On the question of public policy, the court *a quo* again found that the High Court's reasoning was fundamentally flawed. It noted that the English court had applied s 25 of that country's Matrimonial Causes Act 1973, which is almost identical in wording and substance

to s 7(4) of Zimbabwe's Matrimonial Causes Act. The court *a quo* further held that material non-disclosure by a spouse is a recognised factor in both English and Zimbabwean law and may justify an adverse award against the non-disclosing party. The court ruled that the English judgment was not arbitrary because the respondent had been awarded properties the total net value of which was less than half a million United States dollars, whereas the applicant retained extensive assets and interests, including substantial shareholdings in National Merchant Bank Zimbabwe, offshore bank accounts and other properties, valued at well over a million United States dollars.

The court *a quo* concluded that the application of English law in the foreign judgment did not contravene Zimbabwean public policy, as the relevant legal principles were strikingly similar to those applied locally. Any perceived errors in the English decision were matters for appeal in England and not grounds to deny recognition and enforcement of that decision in Zimbabwe.

Accordingly, the court *a quo* allowed the appeal with costs. It set aside the judgment of the High Court and substituted it with an order dismissing the applicant's declaratory application and granting the respondent's application for recognition and enforcement of the foreign judgment.

The Application for Direct Access

Aggrieved by the decision of the court *a quo*, the applicant has approached this Court seeking leave for direct access. It is the applicant's case that although the court *a quo* did not determine a constitutional matter, it is in the interests of justice for direct access to be granted because the decision of the court *a quo* violated his right to a fair hearing. He further contends that the order of the court violated his right to equal protection of the law, as he was denied the opportunity to challenge the jurisdiction of the English Court on the basis that he had failed to

raise the issue when the matter was before that court. He also maintains that the English Court lacked jurisdiction, arguing that in divorce matters jurisdiction lies with the court of the husband's domicile. Lastly, he contends that there are no material disputes of fact and that he has no alternative remedy.

In the event that the applicant is granted direct access, he seeks a declarator *cum* order to the effect that:

- his rights under ss 56(1) and 69(2) of the Constitution were infringed by the Supreme Court;
- the judgment *a quo* be declared null and void and of no force and effect and is accordingly set aside;
- the decree nisi and decree absolute issued by the English court in 2013 and 2014 are against the public policy and laws of Zimbabwe and are accordingly not registrable for purposes of enforcement in Zimbabwe;
- alternatively, the matter be remitted to the Supreme Court for it to be dealt with *de novo* by a differently constituted bench;
- there be no order as to costs.

Submissions by Counsel

Counsel for the respondent raises several preliminary points. He submits that the judgment of the court *a quo* is final, as the order was issued pursuant to concessions made by the applicant. He argues that in the court *a quo*, the applicant conceded that the application for the setting aside of the English court judgment was invalid. On that basis, bringing the present application based on an alleged violation of constitutional rights amounts to an abuse of court process.

Counsel further contends that, in seeking direct access, the applicant is in effect attempting to fashion a new cause of action. He maintains that the present application is, in substance, an appeal in disguise. It is driven by the applicant's dissatisfaction with the property division order, having remained content with the divorce decree after he remarried. Counsel

also argues that the matter is now moot, as the applicant has acted upon the divorce order and thereby perempted his right to challenge the decision.

Per contra, counsel for the applicant submits that the applicant's position before this Court is that the decision of the English court was invalid and that no concession was ever made contrary to that position. Counsel further contends that the present application cannot be characterised as an appeal in disguise, since an application for direct access is premised on a distinct cause of action arising from the alleged violation of constitutional rights. On the question of mootness, he argues that the matter is not moot, as what is being challenged is the manner in which the court *a quo* conducted the appeal proceedings.

On the merits, counsel for the applicant submits that the court *a quo*, in determining the appeal before it, violated the applicant's right to be heard by failing to supply reasons for its decision timeously. He argues that an inference can be drawn that, when the court allowed the appeal, it did so without reasons to support its decision, thereby rendering the decision arbitrary. Counsel further contends that the decision is irrational, as the order of the English court effectively rendered the applicant homeless, given that both the matrimonial home in Zimbabwe and the one in England were awarded to the respondent. Additionally, the order was not in conformity with the provisions of the Matrimonial Causes Act and was therefore contrary to public policy. The order also violates the applicant's right to a home as enshrined in s 74 of the Constitution.

Furthermore, counsel contends that the English court lacked jurisdiction to determine the matter, as the applicant was domiciled in Zimbabwe at the time the divorce proceedings were instituted. The court *a quo* erred in finding that the applicant had submitted to the jurisdiction of the English court, inasmuch as the principle of submission to jurisdiction applies in commercial disputes and does not extend to matrimonial proceedings. He also argues that,

in terms of the common law, domicile of origin is acquired by birth and is only relinquished when a party acquires a domicile of choice.

On the other hand, counsel for the respondent submits that the applicant was awarded more properties than the respondent and, therefore, it cannot be said that he was left homeless. He argues that the applicant's right to a fair hearing was not violated, as the order of the court *a quo* was made available the day after the hearing and reasons therefor were eventually provided, enabling the applicant to pursue his case before this Court. Thus, the applicant did not suffer any prejudice, given that there is no time limit within which to apply for direct access.

On the question of jurisdiction, counsel submits that, in terms of s 3(4) of the Immigration Act [*Chapter 4:02*], a person loses domicile if he or she has been absent from Zimbabwe for a continuous period of five years. In this case, at the time the divorce proceedings were instituted, the applicant had a matrimonial home and numerous other assets in England and was clearly domiciled in England. Counsel further contends that the issue of jurisdiction ought to have been raised before the English court and that the onus rested on the applicant to demonstrate that the English court lacked jurisdiction. Additionally, the issue of the English Court's jurisdiction could not be challenged before the High Court, as it was not raised during the divorce proceedings.

Lastly, counsel submits that, under s 56 of the Constitution, a litigant alleging unequal treatment must show that another person was accorded preferential treatment, which had not been established in this case. The applicant has failed to demonstrate that any other person received preferential treatment that he himself was denied.

Although several preliminary points were raised and argued, I take the view none of them is material to the proper disposition of this matter. Accordingly, the Court will not allow itself to be diverted by them and will proceed to determine the substantive merits of the case.

The Governing Principles

The law on direct access in this jurisdiction is settled. In considering an application for direct access, the Court is guided by r 26(3), which obliges an applicant to specify the grounds on which direct access is said to be in the interests of justice, the nature and basis of the relief sought, and whether the matter can be resolved without oral evidence. See *Denhere v Denhere & Anor* 2019 (1) ZLR 554 (CC). Rule 26(8) further identifies the factors relevant to a consideration of the interests of justice, including the applicant's prospects of success, the availability of alternative remedies and the presence of material disputes of fact.

The jurisprudence of this Court has consistently emphasised that an applicant bears the burden of demonstrating, with clarity and specificity, that the grant of direct access is warranted. This is so because the requirement for leave operates as an essential safeguard against the improper or premature invocation of the jurisdiction of this Court, particularly in circumstances where the decision under challenge does not emanate from constitutional proceedings.

In the present matter, it is common cause that the court *a quo* did not determine any constitutional issue. Before this Court, however, the applicant directly impugns the judgment *a quo* on the ground that the Supreme Court violated his fundamental right to protection of the law and right to a fair hearing in the manner in which it adjudicated the appeal proceedings before it. He also seeks consequential redress. Thus, he has undoubtedly engaged a constitutional matter or issue, as defined in s 332 of the Constitution, involving the interpretation and enforcement of the supreme law. Accordingly, it becomes necessary to assess whether the interests of justice, and in particular the prospects of success, favour the granting of leave for direct access. In undertaking this inquiry, the Court will have regard,

amongst other things, to the constitutional rights which the applicant alleges were infringed by the court *a quo*.

Right to a Fair Hearing

In his founding affidavit, the applicant avers that it is in the interests of justice for direct access to be granted because the court *a quo* violated his right to a fair hearing guaranteed by s 69(2) of the Constitution, in that the reasons for its decision were not supplied timeously. Section 69(2) provides as follows:

“In the determination of civil rights and obligations, every person has a right to a fair, speedy and public hearing within a reasonable time before an independent and impartial court, tribunal or other forum established by law.”

In *De Beer NO v North-Central Local Council and South-Central Local Council & Ors* 2002 (1) SA 429 (CC) p 440, the South African Constitutional Court elaborated the significance of the right to a fair hearing as a value that “affirms [and] lies at the heart of the rule of law” and as being “fundamental to a just and credible legal order”.

While I fully endorse the aforesaid sentiments, it must be emphasised that a mere delay, without evidence of actual prejudice, does not automatically amount to a violation of the right to a fair hearing. Section 69(2) of the Constitution primarily protects the opportunity to be heard and the fairness of the proceedings concerned, rather than the speed with which attendant judgments are delivered. For a claim of violation of rights to succeed, the applicant must demonstrate that the delay materially affected the exercise of his rights, for example, by impeding the filing of an appeal, delaying the enforcement of a decision or causing some other tangible detriment that links the delay in question directly to the alleged infringement.

In his letter to the Registrar of the court *a quo*, the applicant requested the reasons for judgment in order to determine whether to pursue the matter before the Constitutional Court. After the reasons were provided, albeit after quite some time, he was nonetheless able to take

the matter further. Hence, the applicant did not suffer any prejudice that would warrant the setting aside of the court *a quo*'s decision.

Furthermore, the applicant seeks to have the court *a quo*'s decision set aside solely on the basis that the reasons for its judgment were delayed. In my view, the relief sought is not justified. The reasons for judgment were ultimately furnished and the record reflects that they were comprehensive and supported the order that had been issued immediately after the matter had been heard. The applicant's contention that the delay indicates that the court had arbitrarily issued its order without having considered and formed the reasons therefor is wholly unsupported by the evidence on record.

Additionally, it is pertinent to note that the applicant seeks, in the event that direct access is granted, an order remitting the matter to the court *a quo* for redetermination by a differently constituted bench. This is patently pointless and futile as remittal would not remedy the delay in the provision of reasons, particularly given that those reasons have already been furnished.

In the final analysis, the contention that the court *a quo* violated the applicant's right to a fair hearing is entirely unsubstantiated. It has no prospects of success and does not warrant the grant of direct access.

Right to Equal Protection of the Law

The applicant further argues that the decision of the court *a quo* violated his right to equal protection of the law embodied in s 56(1) of the Constitution. The subsection provides that:

“All persons are equal before the law and have the right to equal protection and benefit of the law.”

In interpreting s 56(1), it was held by this Court, in *Nkomo v Minister of Local Government, Rural and Urban Development & Ors* CCZ 6-16, at p 8, as follows:

“The right guaranteed under s 56(1) is that of equality of all persons before the law and the right to receive the same protection and benefit afforded by the law to persons in a similar position. It envisages a law which provides equal protection and benefit for the persons affected by it. It includes the right not to be subjected to treatment to which others in a similar position are not subjected. In order to found his reliance on this provision the applicant must show that by virtue of the application of a law he has been the recipient of unequal treatment or protection. that is to say that certain persons have been afforded some protection or benefit by a law, which protection or benefit he has not been afforded, or that persons in the same (or similar) position as himself have been treated in a manner different from the treatment meted out to him and that he is entitled to the same or equal treatment as those persons.”

Similarly, in *Gonese v Minister of Finance and Economic Development* CCZ 11-23, at p 22, it was held that:

“This Court has, on several occasions in the past, defined the import of the right under s 56(1) of the Constitution. In short, it is a non-discrimination provision which guarantees equality before the law. It is different from s 18(1) of the former Constitution which provided for a general right to the protection of the law. Section 56(1) of the Constitution envisages a law which provides for equality in the protection and benefit of persons affected by it and the right not to be subjected to conduct or treatment to which others similarly placed are not. As remarked in *Minister of Justice, Legal and Parliamentary Affairs & others v Chinanzvavana & Anor* S 119-21, a decision of the Supreme Court of Zimbabwe, which no doubt correctly reflects the law in this country, the provision simply guarantees equality before the law. A person alleging a violation of a s 56(1) right must not only prove unequal or different treatment but also that others in a similar provision were afforded such protection.”

The core principle underlying the right to equal protection and benefit of the law is to ensure that individuals in the same or similar circumstances are not treated differently without justification. The applicant contends that the court *a quo* denied him the equal opportunity to challenge the jurisdiction of the English court on the basis that he had not raised that issue while the matter was still pending before that court. He argues that jurisdiction, being a question of law, may be raised at any stage of the proceedings.

The applicant is correct in contending that the question of jurisdiction can be raised at any time during the proceedings. However, it is ordinarily convenient and apposite for the issue

to be taken as a preliminary point at the commencement of the proceedings under consideration.

As was observed *Dube v Matseka* S-48-23, at p 6:

“It is trite that the issue of jurisdiction remains alive between the parties at every stage of the proceedings. It may therefore be raised at any stage of the matter including at the appeal stage though in appropriate cases a litigant may be held to have abandoned, acquiesced in or submitted to the court’s jurisdiction. In any proceedings it is convenient that the issue of jurisdiction be raised right at the commencement of proceedings to avoid wasting time and money. It is pointless to proceed with a trial in which the court has no jurisdiction.” (My emphasis)

Generally speaking, a court must satisfy itself that it is properly seized with a matter and the failure of a litigant to raise the issue at an earlier stage does not preclude that issue from being considered where justice so requires. Where a court is seized with the registration of a foreign judgment, it must first be satisfied that the foreign court concerned itself had jurisdiction to determine the dispute. Even where the parties do not raise the issue of jurisdiction, the court may enquire into it *mero motu*. The enquiry also extends to the criteria for recognising foreign judgments. These criteria were fairly comprehensively set out in *Gramara (Pvt) Ltd & Anor v Government of Zimbabwe & Ors* 2010 (1) ZLR 59 (H), at p 67, where it was held as follows:

“The general requirements for recognition and enforcement of foreign judgments are set out in Joubert (*op. cit.*), at para. 477. These requirements were adopted and applied by the Appellate Division in *Jones v Krok* 1995 (1) SA 677 (A) at 685B-E and in *Purser v Sales* 2001 (3) SA 445 (SCA) at 450D-G. In *Jones’s* case, CORBETT CJ summarised these requirements as follows:

‘As is explained in Joubert , the present position in South Africa is that a foreign judgment is not directly enforceable, but constitutes a cause of action and will be enforced by our Courts provided (i) that the court which pronounced the judgment had jurisdiction to entertain the case according to the principles recognised by our law with reference to the jurisdiction of foreign courts (sometimes referred to as ‘international jurisdiction or competence’); (ii) that the judgment is final and conclusive in its effect and has not become superannuated; (iii) that the recognition and enforcement of the judgment by our Courts would not be contrary to public policy; (iv) that the judgment was not obtained by fraudulent means; (v) that the judgment does not involve the enforcement of a penal or revenue law of the foreign State; and (vi) that enforcement of the judgment is not precluded by the provisions of the Protection of Businesses Act 99 of 1978, as amended.” (My emphasis)

It is clear from the above authority that a foreign judgment may only be enforced if the foreign court which issued the judgment had the necessary jurisdiction to determine the matter. It is not in dispute that the court in England was endowed with international jurisdictional competence and the requisite power and authority to divorce the contending parties. Moreover, before the High Court, the applicant did not file any evidence regarding his domicile or the jurisdiction of the foreign court. Indeed, he did not at any time dispute the respondent's unequivocal statement in her founding affidavit that "The court in England had jurisdiction to deal with the matter and the parties accordingly submitted without contest".

The Question of Domicile and Jurisdiction

The applicant's case before the court *a quo* was that, in matrimonial proceedings, the court with proper jurisdiction is that of the husband's domicile. In assessing whether the applicant was domiciled in Zimbabwe or England at the relevant time, *i.e.* at the time when the matrimonial proceedings were instituted, regard must be had to the relevant provisions of the Immigration Act. Section 3(4) of the Act prescribes the circumstances under which a person loses his or her Zimbabwean domicile. It provides as follows:

"(4) Subject to subsection (5) –

- a) a person shall, for the purposes of this Act, lose his domicile in Zimbabwe if he—
 - i. has voluntarily departed from and resides outside Zimbabwe with the intention of making his home outside Zimbabwe; or
 - ii. is absent from Zimbabwe for a continuous period of five years or such longer period as the Minister may, at his request, fix before the expiry of that period:

Provided that the Minister may, in special circumstances, fix a longer period in terms of this subparagraph after the expiry of the period of five years;

- b) the fact that a person has taken up residence outside Zimbabwe shall be *prima facie* evidence of his intention of making his home outside Zimbabwe and the onus of proving otherwise shall be on the person whose status is in question;
- c) the fact that a person who was domiciled in Zimbabwe has made any statement, whether for the purposes of this Act or any other enactment or otherwise, to the effect that he is no longer a resident or no longer regards himself as a resident of Zimbabwe shall be *prima facie* evidence that he has lost his domicile in Zimbabwe."

As I have already indicated, the issue for determination *in casu* is whether, at the relevant time, the applicant was domiciled in Zimbabwe for purposes of the applicable principle of private international law. When s 3(4) of the Immigration Act is applied to the facts of the applicant's personal history, it becomes evident that he had ceased to be domiciled in Zimbabwe at the material time.

In terms of s 3(4)(a)(i), a person loses Zimbabwean domicile if he voluntarily departs from Zimbabwe and resides outside the country with the intention of making his home elsewhere. *In casu* the applicant left Zimbabwe before 1986 to take up employment in Washington with the World Bank. Thereafter, he relocated to London, where he continued to reside and work for many years. The pattern of long-term residence, employment and establishment of life abroad clearly demonstrates that he had settled outside Zimbabwe. All of these factors, taken together, satisfy the statutory requirement of voluntary departure coupled with an intention to make his home elsewhere.

Section 3(4)(a)(ii) provides that a person loses domicile if he is absent from Zimbabwe for a continuous period exceeding five years, unless he proves otherwise or has obtained ministerial authorisation to retain his domicile. The judgment of the English court made the finding that the applicant resided outside Zimbabwe for several decades, from the mid-1980s through the 1990s, 2000s and into the 2010s. There is no evidence on record to show that he sought or received any authorisation from the relevant Minister to maintain his Zimbabwean domicile. His prolonged absence from the country well exceeds the five-year statutory threshold and therefore triggers the loss of his domicile by operation of law.

Under s 3(4)(b), taking up residence outside Zimbabwe constitutes *prima facie* evidence of an intention to make one's home in a foreign country and the onus rests on the person concerned to rebut that inference. In this case, the applicant not only lived abroad for

an extensive period but also established his professional life in London and the United States of America. Nothing on record indicates any intention on his part to return to Zimbabwe on a permanent basis. He did not discharge the onus placed upon him by statute to controvert his loss of domicile. The High Court therefore erred and misdirected itself in placing the onus on the respondent to disprove that loss.

Lastly, s 3(4)(c) provides that statements or conduct suggesting that a person no longer regards himself as resident in Zimbabwe constitute *prima facie* evidence of loss of domicile. In his founding affidavit filed in the High Court in support of the application for a declaratory order, the applicant accepted that he was ordinarily resident in the United Kingdom at that time.

Taken cumulatively, the facts indisputably establish loss of the applicant's domicile in this country. He voluntarily departed from Zimbabwe, remained outside the country for well over five years, established his home and livelihood abroad, and conducted himself in a manner entirely consistent with the abandonment of his Zimbabwean domicile. He did not lead any evidence sufficient to displace the statutory presumptions arising under s 3(4).

Accordingly, the Court finds that the applicant was not domiciled in Zimbabwe but in the United Kingdom at the relevant time. Consequently, the court in England was vested with the requisite jurisdictional competence to decide the matrimonial proceedings instituted by the respondent.

It follows from all of the foregoing that the English court did not violate any principle of public policy in adjudicating and determining the matter before it. It also follows that the applicant was not treated in any differential or discriminatory fashion by the court *a quo*. Consequently, there is no basis for interfering with the judgment of the Supreme Court on the basis that it arbitrarily and irrationally violated his right to equal protection of the law under s 56(1) of the Constitution.

Section 74 of the Constitution

The applicant further contends that the decision of the English Court had the effect of depriving him of a home. He argues that in terms of s 74 of the Constitution, a person cannot be deprived of a home without just cause. For this proposition, counsel relies on the case of *Zuze v Trustees of Bongayi Rushworth Mlambo & Anor* 2019 (3) ZLR 561 (S) and *Chitungwiza Residents Trust (Chitrest) v Minister of Local Government Public Works and National Housing & Anor* CCZ-2-25. Counsel argues that the decision was arbitrary, irrational and contrary to public policy because the respondent was awarded both the matrimonial homes in England and in Zimbabwe. Section 74 of the Constitution provides as follows:

“No person may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances.”

In my considered opinion, the section is wholly irrelevant to the facts and adjudication of the present matter. The decision of the English court was granted after considering all the relevant circumstances of the parties, including their respective proprietary interests. In principle, the courts are endowed with wide discretionary powers when distributing property in divorce proceedings. This was succinctly recognised in *Ncube v Ncube* 1993 (1) ZLR 39 (S), at 41A, where the court opined that:

“The determination of the strict property rights of each spouse in such circumstances, involving, as it may, factors that are not easily quantifiable in terms of money, is invariably a theoretical exercise for which the courts are indubitably imbued with a wide discretion.”

The wide discretion of trial courts in this regard was also aptly articulated in *Gonye v Gonye* 2009 (1) ZLR 232 (S), at 236H-237B, where it was held that:

“It is important to note that a court has an extremely wide discretion regarding the granting of an order for the division, apportionment or division of the assets of the spouses in divorce proceedings. Section 7 (1) of the Act provides that the court may make an order with regard to the division, apportionment or distribution of the assets of the spouses including an order that any asset be transferred from one spouse to the other. The rights claimed by the spouses under s 7 (1) are dependent upon the exercise by the court of the broad discretion.”

The applicant has failed to demonstrate that the English court improperly exercised its discretion in the manner in which it distributed the parties' properties. In making its determination, the English court considered the applicant's lack of candour regarding the parties' assets. Moreover, the divorce order granted the applicant properties and assets of considerably greater value than those awarded to the respondent. Accordingly, it seems almost risible to suggest that the divorce order rendered the applicant destitute let alone homeless.

Disposition

The applicant has failed to establish that he has any prospects of success in the main matter and that it is therefore in the interests of justice for this Court to grant direct access. He has not demonstrated any violation of his constitutional rights under ss 56(1), 69(2) or 74 of the Constitution. The delay in the provision of reasons for judgment by the court *a quo* did not occasion any meaningful prejudice to his capacity to launch the present application. Lastly, the alleged unequal treatment was not proved and the jurisdictional challenge lacks merit as the applicant was not domiciled in Zimbabwe at the material time. Consequently, no basis has been laid for interfering with the judgment of the court *a quo* or for remitting the matter for redetermination by that court.

As regards costs, counsel for the respondent argued in his heads of argument that “applicant essentially seeks to enervate respondent with attritional proceedings”. However, he did not motivate or pursue this argument at the hearing of the matter. In any event, despite the applicant's seemingly vexatious conduct, I do not think that there is sufficient warrant for departing from the norm of not awarding costs in constitutional matters.

Accordingly, it is ordered as follows:

1. The application for direct access be and is hereby dismissed.
2. There shall be no order as to costs.

MAKARAU JCC: I agree.

GOWORA JCC: I agree.

Thompson Legal Practitioners, applicant's legal practitioners
L T Muringani Legal Practice, respondent's legal practitioners