

MAZVITA SPIWE JEAN SIMANGO
versus
ALEX HWENGWERE

HIGH COURT OF ZIMBABWE
TSANGA J
HARARE, 7 February & 2 March 2023

Opposed Application

P Murowe, for the applicant
WT Mufuka, for the respondent

TSANGA J: This is an application for maintenance *pendente lite* and contribution towards costs made in terms of r 67 of the High Court Rules 2021 which permits such an application where there is a need for such support in divorce proceedings. The applicant seeks maintenance in the sum of £1700.00 a month as well as a contribution of 80% towards her legal costs. The common cause facts are that she moved to the United Kingdom from South Africa where she was living with her husband. She was not working as she had previously left her nursing job in England to be with her husband.

Having moved back to England upon separation, she started off unemployed relying on the savings that the parties had in the United Kingdom. Later her husband also maintained her from September 2019 to September 2021 when he would send her an average £1700.00 a month for her sustenance whilst she sought for a job. She initially got a part time job as a paralegal before getting a full time job with a Citizen's Advice Bureau from which she earns £1859.85 per month after tax. She gave a breakdown of her expenditure as follows:

BT Internet	31.32
Water	45.00
Gas/Electricity	75.00
EE (Phone)	16.67
Council Tax	160.00
Rent	1125.00
Church	150.00
Transport	180.00
Groceries	370.00
Therapy	360.00
De-stressing / social activities	250.00
Pharmacy	9.35
Money home (Zim)	200.00
Total	£2962.00

Her main expenditures relate to rentals, internet, water, gas phone, transport, and grocery expenses. She also included the sum of £360.00 per month for therapy sessions from trauma arising from the marriage. Further included are her contribution to her church of £150 .00 a month, social activities at £250.00 and £200.00 which she remits home to Zimbabwe every month. It is these highlighted expenditures in particular which the respondent queries as exaggerated if not unwarranted.

More significantly, the respondent opposes the application on the basis that she does not need maintenance pending divorce since she is now working and is capable of looking after herself. Whilst she disclosed her income, he did not do so on the basis that his query is that she does not need the money and therefore the question of his income would not come in. As for her quest for a contribution towards costs, his stance is that she has not articulated how much these costs would be and that he cannot commit himself to an unspecified figure.

The factors taken into account in an application for maintenance pending divorce include the position of the parties prior to the separation; the current financial position of each; and the needs of each between the date of the application and the hearing of the divorce action. See *Lindsay v Lindsay* 1992 (1) ZLR 332(H). In this instance, the applicant sought to amend her order such that her claim for maintenance be backdated to April 2022 this being the date her matter was lodged with the Registrar of this Court.

Prior to the separation she was being maintained by the respondent. That much is not in dispute. It is also not in dispute that she has since gotten a job. The difference between what she earns and what she says are her monthly expenditures amounts to £1102.15. This amount includes counselling sessions for marriage induced stress where, however, the only evidence attached was for 6 sessions that had already been held. There was no evidence attached to show that these have indeed been on going. The letter she attached which the respondent queries as not being on a letter head, did not state how many more sessions she would need. It simply stated that she may need more sessions over and above those she had already had. It is trite that claims must be substantiated. This amount in my view does not meet the requirements of an ongoing expense and cannot, without the requisite evidence, be justified as a recurring expense. This leaves an amount of £742.15. Respondent has queried the expenditure on church contributions, remittances to Zimbabwe and social activities. It is true that these expenses have also not been substantiated with evidence as ongoing expenses but one would not say that they are entirely unreasonable. After all the approach of the court in an application for maintenance pending divorce is more relaxed as compared to the approach in final divorce matter since the aim is to allow a party to continue a standard of living comparable with that formerly enjoyed. See *Galante v Galante* 2000 (1) ZLR 453. It is also evident in this application that the respondent and the applicant are indeed fairly well to do. Taking into account that these expenditures may not be monthly, this court is of the view that that an amount of £500.00 a month would enable the applicant not to live from hand to mouth pending the divorce whilst taking into account that she is now working. There is no evidence that she has maintained two jobs as the respondent alleged.

On contribution towards legal costs, it is a fact that the respondent made an offer to pay costs when he anticipated an unopposed divorce. He clearly appreciated that applicant's means are less than his. That reality is now even more so with a contested divorce that she would not be able to afford. As stated in the case of *Chinyamkobvu v Chinyamkobvu* HH 181/14 the requirements for a contribution towards costs are (a) a subsisting marriage; (b) a matrimonial suit in action; (c) reasonable prospects of success; (d) not being in a financial position to defend the action without the contribution of the other spouse. She does meet these requirements. She cannot be prevented from seeking a fair deal by a withdrawal of the offer to pay costs which was for an uncontested divorce. With the court exercising its discretion on what is fair and equitable

distribution of property on divorce based on the facts of each case, it cannot be said her quest is without merit

As for the argument that the costs are indeterminate at this point, the applicant has indeed stated that they should be calculated at the conclusion of the divorce matter and that they ought to be taxed. The respondent is in a financial position to pay for such a contribution.

Accordingly it is ordered that:

1. The application for maintenance and contribution to costs be and is hereby granted.
2. The respondent shall pay:
 - a. Maintenance to the applicant at the rate of £500.00 per month with effect from 1st April 2022 pending the finalization of the matter under case reference number HC 5937/21.
 - b. 80% of the applicant's legal costs to be determined at the conclusion of the divorce matter and to be taxed accordingly.

Scanlen and Holderness, applicant's legal practitioners
Thompson Stevenson and Associates, respondent's legal practitioners