

ALBERT TAKARUZA

Versus

LINDA MEMORY TAKARUZA

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO5 AND 6 JUNE 2014

Bruce Masamvu for plaintiff
Defendant in person

Civil Trial

KAMOCHA J: The issues that were referred for trial to this court for a brief trial were these:-

- (1) Whether the parties have stayed apart for more than a year;
- (2) Quantum of maintenance; and
- (3) Whether or not the marriage has irretrievably broken down.

The defendant was legally represented at the time the parties appeared before a Judge for the pre-trial conference. When asked why the defendant was not being represented at the trial she told the court that she suspected the legal practitioner to have been improperly associating with her husband the plaintiff. That allegation was flatly refuted by the plaintiff who advised the court that defendant was just being very difficult. She did not want to co-operate at all and had vowed that she would never co-operate and was going to be as difficult as she possibly could. She even refused to produce the marriage certificate for the trial. She accused the plaintiff of improperly associating with a number of other women.

When the court was being told of how unco-operative she was, she appeared to be enjoying that and was laughing and smiling in amusement. The court had to tell her to stop doing so as there was nothing funny about what she was said to have been doing. She had to be told to bring the marriage certificate to court the following day.

The parties were agreed in their evidence that they had stayed apart for more than one year. They parted ways in August 2012 and that was the last time they shared conjugal rights. The plaintiff told the court that he had lost love and affection for the defendant because of her prolonged stay in South Africa. When he requested her to come back home she was simply not interested and his requests and pleas fell on deaf ears.

The marriage has indeed irretrievably broken down although the defendant would not want it to be dissolved for the sake of their 9 year old daughter.

There was no controversy on the distribution of the matrimonial property as the plaintiff

offered the defendant all the property she wanted. She accordingly should be awarded the property that she proposed in her plea.

The parties have already been to a maintenance court and there is a maintenance order. The plaintiff was ordered to pay \$100 per month for the minor child and \$50 per month for the defendant. Plaintiff has however encountered problems in paying the money as his employers have financial problems and their payment of salaries for their employees is very erratic. His employer QV Pharmacies is now under judicial management. The branch manager wrote a letter on 14 November 2013 acknowledging that due to economic challenges prevailing in the country, the company was unable to pay its staff on time and in full.

The plaintiff requested to have maintenance order revised downwards so that he paid \$80 per month for the child and \$30 for the defendant.

The defendant strongly opposed the variation of the child's amount although she had no problem with the variation of the money payable to her.

I agree with the defendant that plaintiff should maintain the payment of \$100 per month for the minor child. But the amount payable to defendant should be revised downwards to \$30 per month. The defendant is still young and able bodied. She is in fact working at the present moment earning \$80 per month. The plaintiff has agreed to pay school fees for the child and medical aid.

In the circumstance the order of this court is as follows:

It is ordered that:

- (1) A decree of divorce be and is hereby granted;
- (2) Plaintiff shall pay \$100 per month and school fees for the child and medical aid to cover the child;
- (3) Plaintiff shall pay \$30 per month for the defendant;
- (4) The custody of the minor child shall be awarded to the defendant with plaintiff having access to the child every alternate weekend and every alternate school holiday;
- (5) The matrimonial property shall be shared thus:-

Plaintiff

Wardrobe
Head board
Bed
Motor vehicle
Laptop
Flat screen television set
Carpet
DStv decoder

Defendant

2 television sets
Queen size bed
7 piece kitchen table
Fridge
Kitchen unit
Lounge suit
Microwave
Home theatre
DVD player

(6) Each party shall bear its own costs.

Dube-Tachiona & Tsvangirai, plaintiff's legal practitioners