

CLEVER MAKWARIMBA
versus
ENGELINE MAKWARIMBA (NEE MUCHERO)

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 16-17 JUNE AND 9 JULY 2015

Civil Trial

Mr Z. *Ncube* for the applicant
Defendant in person

MOYO J: This is an action for divorce. Plaintiff issued summons for a decree of divorce on the grounds of irretrievable breakdown of marriage together with ancillary relief.

The parties were married to each other on 24 March 2000 and the marriage still subsists. There are two minor children born of the marriage, the other four now being majors.

The two minor children are Nyasha Makwarimba born on 15 January 2000 and Paul Clever Makwarimba born on 11 August 1997. The parties went through a pre-trial conference wherein all the ancillary issues were thrashed and agreed upon including the issue of divorce. However, defendant later refused to sign the divorce settlement which had been captured in a consent paper to be signed by both parties. She said she did not want to divorce.

The plaintiff gave evidence to the effect that the marriage has irretrievably broken down as he moved out of the matrimonial home in July 2013, meaning its almost two years since plaintiff moved out of the matrimonial home. He emphatically related to the court his lack of interest in the union and his desire to end same as he no longer loved the defendant. He told the court that his life had become miserable because of the marriage. He told the court that the ancillary relief can be dealt with in terms of the draft consent paper.

The defendant on the other hand told the court that she wanted to keep her marriage until when death does them part as those are the vows they made at the time of marriage. She also confirmed that plaintiff moved out of the matrimonial home in July 2013 and that they no longer

lived together as husband and wife but that she still entertained a hope that the defendant will one day return to their home. She also confirmed that she did not have issues with the ancillary relief as dealt with in the draft consent paper, but that what she does not want is to divorce. In the case of *Murada v Murada* 2008 (2) ZLR 326 (H) at 329 E- F, NDOU J had this to say:

“---- it is hardly possible for a court to find that there is a reasonable prospect of reconciliation between parties when one of them is determined to bring the marriage to an end.”

In the case of *Kumirai v Kumirai* HH17-06 MAKARAU J (as she then was) stated that:

“To satisfy the court that the marriage still has some life in it, one has to adduce evidence to the effect that after filing of the summons, the parties have reconciled and are living after the manner of husband and wife.”

In the *Kumirai* case (*supra*) MAKARAU J (as she then was) went on to say that it was the plaintiff’s evidence that he is no longer desirous of remaining married to the defendant and that in her view, that was adequate for the court to grant a decree of divorce.

I hold the same view, the plaintiff left the matrimonial home in July 2013 (almost 2 years ago). He has emphatically told the court that he is no longer interested in the marriage. That’s enough in my view for how do I order him to go back home and be a husband to his wife whom he has told the court in no uncertain terms that he is no longer interested in.

That would be impractical for this court has no magic to rekindle the flames between the parties. The plaintiff has lost all love and affection for the defendant and that is an essential ingredient for the marriage to continue. The defendant is clearly fighting a lost cause. The plaintiff voluntarily entered into this union with no court orders, neither can denying him the divorce force him to participate in a union he is now disinterested in. Marriage is a two way relationship and when one party no longer wants it, there is not much that even a court can do.

I find that a decree of divorce has to be granted in these circumstances. On the ancillary issues, because both parties told the court that they were happy to adopt the draft consent paper, I would simply adopt the parties agreement as contained in the consent paper, for that in my view will result in justice and equity.

I accordingly make the following order:

- 1) A decree of divorce be and is hereby granted.

- 2) The custody of the two minor children of the marriage, namely Nyasha Makwarimba (Born 15 January 2000) and Paul Clever Makwarimba (Born 11 August 1997) be and is hereby awarded to the defendant with plaintiff exercising access rights on alternate weekends and alternate school holidays.
- 3) The plaintiff be and is hereby ordered to pay maintenance at the rate of \$120 per month per child for the two minor children namely Nyasha Makwarimba and Paul Clever Makwarimba , and in addition he meets all their school fees and ancillary schooling costs until such children attain the age of majority or becoming self supporting whichever occurs earlier.
- 4) That plaintiff be and is hereby awarded the following property;
 - a) An Isuzu vehicle registration number ACG 7245.
 - b) A Gold Orange trailer registration number ABU 1166.
- 5) That defendant be and is hereby awarded the following:
 - a) Stand number 2466 Cowdray Park. In relation to this property plaintiff is ordered to remove all encumbrances on this property by clearing all outstanding debts wherein this property was tendered as collateral.
 - b) The Toyota spacio motor vehicle.
 - c) All household goods other than the two items awarded to the plaintiff in paragraph 4 herein.
- 6) The plaintiff be and is hereby ordered to clear all debts owed in respect of Bienon Trading Pvt Ltd and all the debts pertaining to the children's school fees.
- 7) That each party is to bear his/her own costs.

Calderwood, Bryce Hendrie and Partners, plaintiff's legal practitioners