

JEMITIOUS GUMBO

Versus

VARAIDZO GUMBO

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 17, 18 AND 26 FEBRUARY 2015

T. Chipari for plaintiff
G. Nyoni for defendant

Civil Trial

KAMOCHA J: The plaintiff and defendant got married on 18 September 2007. The plaintiff was a widower and defendant was a divorcee at the time of the marriage. Each had two children from the previous marriage but they had no children together. They had started cohabiting two years before they got married.

Sadly two years after solemnizing their marriage the plaintiff instituted divorce proceedings on 19 November 2009 claiming an order for a decree of divorce and ancillary relief.

He alleged that the marriage had irretrievably broken down owing to the following reasons:-

- (a) The defendant had allegedly verbally abused and ill-treated his children from his former marriage.
- (b) That the parties do not live together as husband and wife and they are not sharing conjugal rights which scenario is inconsistent with a normal marriage relationship; and
- (c) That the parties quarrel verbally quite often and they have lost all love and affection for each other.

He went on to allege that during subsistence of their marriage the parties only acquired a television set and a bed. It was his suggestion that at divorce the defendant should be awarded the colour television set while he gets the bed.

In her plea the defendant responded to what had not been raised by the plaintiff. She denied ill-treating or abusing plaintiff. The plaintiff's allegation was that she verbally abused and ill-treated his children from his previous marriage not him.

She denied any wrong doing on her part and went on to allege that their marriage had been besieged by mistrust and unfaithfulness which made the parties intolerant of each other.

As regards the matrimonial property acquired during the marriage, she alleged that the plaintiff was not being candid with the court and had not made a full disclosure of the matrimonial property. In addition to the two items that he was prepared to disclose there was the following property:- 3 ½ tones of maize; 14 x 50kg bags of rapoko; 14 x 50kg bags of shelled ground nuts; 4 x 50kg bags of millet; 7 x 50kg of beans; 6 x 50kg bags of sweet potatoes; 14 herd of cattle; a homestead; 2 goats; 8 chickens; and Omega radio; 2 x sofas; 3 x double beds (one in rural areas and one in town) sic; 1 blanket; 2 pairs of bed sheets; 8 x 20 litres empty containers; 4 x 25 litre empty containers; kitchen utensils; 4 tents; 2 raincoats; a trunk; 2 x 2 plate stoves; fridge; a radio; 2 x CTV; and a sewing machine.

It was her contention that justice would have been done if plaintiff were to be awarded a sewing machine; a radio which is in Bulawayo; a fridge; a raincoat; a 2 plate stove; one double bed in Bulawayo and one in the rural home; sofas; and 7 head of cattle while she retained the remaining property as her sole and exclusive property.

The parties appeared before a judge for a pre-trial conference whereat it was agreed that the issues for trial were these:-

- “(a) Whether or not the breakdown of the marriage was caused by the issues outlined by plaintiff in his declaration or by the issues outlined by the defendant in her plea;

- (b) Whether the property listed by the defendant forms part of the matrimonial property or not; and
- (c) What is the equitable sharing of the available matrimonial assets.

Each party gave *viva voce* evidence in support of his or her story. It was clear from their stories that their marriage had indeed irretrievably broken down although the defendant at one stage had told the court that she did not want the marriage to be dissolved. Her reason for that was that the plaintiff had infected her with the HIV virus in 2006 before they solemnized their marriage in 2007.

After the infection she discovered that he was HIV positive and was taking ARVs. When she also wanted access to ARV treatment at Mbizo Barracks Clinic she was told she could not as she was not a soldier or plaintiff's wife. So she decided to marry him in 2007 in order to access ARV treatment as plaintiff's wife. The marriage was a marriage of convenience.

She, however, conceded that ARV tablets are now easily available at hospitals and clinics. She further conceded that since their marriage had irretrievably broken down it should be dissolved.

The plaintiff denied infecting the defendant with the HIV virus. It is difficult to make a finding on which of the parties brought the HIV virus into their new marriage as they both admitted that they did not go for an HIV test before they started to cohabit. One or both of them could have got the virus from the previous marriage.

Turning now to the matrimonial property the court finds that the plaintiff had indeed not made a full disclosure of it. This court takes a very dim view of litigants who are not candid with it. An award of cost shall be awarded against such party on a punitive scale as a sign of the court's displeasure.

The defendant filed a document quantifying her claim relating to the crops harvested. The total for all the crops amounts to \$3 140,85. Her half share would be \$1 570,42. It was agreed that the figure be rounded off to \$1 600. Plaintiff shall pay \$100 per month into the

defendant's account number POSB 201310011455 starting from end of March 2015 until the full amount is paid.

Defendant is also awarded the following:- sofas, double bed, Omega radio, one colour television; one 2 plate stove and a sewing machine or their respective equivalent values.

As far as the cattle are concerned defendant averred and conceded that she found the plaintiff with 4 cattle. She said those were his cattle. They, however, bought 2 cattle together which multiplied during the 4 years they lied together. At the most, it was conceded that they had multiplied to six. She is accordingly awarded half of those cattle which is 3 beasts.

In the result this court makes the following order.

It is ordered that:-

- (a) A decree of divorce be and is hereby granted;
- (b) The defendant be awarded \$1 600 for the harvested crops, plaintiff shall pay \$100,00 per month beginning at the end of March 2015 into defendant's POSB account number 201310011455 until the amount is paid in full;
- (c) Defendant is also awarded the following items:- sofas; double bed; one Omega radio; one colour television; one 2 plate stove; and a sewing machine or their respective equivalent values while plaintiff keeps the balance.
- (d) Defendant is further awarded 3 head of cattle;
- (e) The plaintiff who was not candid with the court and did not disclose the bulk of the matrimonial property shall pay the costs of suit on attorney and client scale.

Cheda & Partners, plaintiff's legal practitioners
Messrs, Moyo & Nyoni defendant's legal practitioners