

CHARLES SEPE
and
ANTI CORRUPTION COMMISSION OF ZIMBABWE
versus
CATHERINE SEPE

HIGH COURT OF ZIMBABWE
MAWADZE J
HARARE, 10 May & 21 September 2011

Family Law Court

Trial Cause

F. Nyamayaro, for 1st plaintiff
C.J.Chawafambira, for 2nd plaintiff
G. Masundire, for defendant

MAWADZE J: The first plaintiff and the defendant are husband and wife respectively. They married each other in terms of the Marriage Act [*Cap 5:11*] at Harare in April 1998. Hitherto the parties had contracted a customary law union.

The second plaintiff the Anti-Corruption of Zimbabwe was joined in the proceedings in terms of Order 13 r 87(2)(b) of the High Court Rules 1971 on account of the dispute involving a motor vehicle between the first plaintiff and the defendant.

The first plaintiff issued summons out of the court on 21 June 2010 seeking a decree of divorce and an order of maintenance in respect of the minor children. The marriage between the parties was blessed with six (6) children namely;

1. Rutendo Privilege Sepe born on 28 August 1984 and is now 27 years old.
2. Prosper Tinashe Sepe born on 25 April 1986 and is now 25 years old
3. Charity Kudzai Sepe born on 30 September 1988 and now 23 years old
4. Chiedza Catherine Sepe born on 15 May 1993 and is now 18 years old.
5. Ruramayi Christophily Sepe born on 12 September 2000 now 11 years
6. Christabel Rangariraishe Sepe born on 1 February 2002 and now 9 years old.

The other child referred to as part of the family Miriam Felistas born on 9 August 1995 and now 16 years old is born to the defendant's late sister. This child cannot be deemed to be the first plaintiff's child unless the first plaintiff had assumed legal responsibility over the child. I shall therefore proceed on the basis that there are only two minor children namely Ruramayi Christophily and Christabel Rangariraishe. The order

relating to custody and maintenance would relate to these two minor children though the first plaintiff has indicated his willingness to pay for the full school account for Chiedza Catherine Sepe now 18 years old.

At the pre-trial conference the following issues were agreed to be contentious and referred to trial;

1. Whether or not the Toyota Vigo Registration number ABK 4333 forms part of the matrimonial assets for purposes of property sharing.
2. Whether or not the first plaintiff is obliged to maintain the defendant and if so the quantum thereof.
3. How the goods listed in the attached schedule to the joint pre-trial conference minute should be disposed of as both parties have declared no interest in them.

It is common cause that the parties are in agreement that their marriage has irretrievably broken down and that custody of the minor children be awarded to the defendant. It became apparent also that the parties had not agreed on the quantum of maintenance to be paid in respect of the minor children hence this became an issue during the trial.

During the trial the first plaintiff Charles Sepe testified. Christopher Chisango testified on behalf of the second plaintiff and the defendant Catherine Sepe gave evidence. The following exhibits were produced.

Exhibit 1 – is a letter written by Mr C. Chisango a General Manager of the Anti-Corruption Commission of Zimbabwe to the first plaintiff's legal practitioners dated 7 February 2011 advising that the Toyota Hilux Vigo Registration No. ABK 4333 in issue belongs to the second plaintiff the Anti-Corruption Commission and that the first plaintiff earns a basic salary of US\$245-00 per month.

Exhibit 2(a) & (b) are copies of the first plaintiff's payslip for January 2011 showing a gross salary of \$245-00 and net salary of \$292-12 and for April showing a gross salary of \$245-00 and net salary of \$317-12.

Exhibit 3 is the registration book of the motor vehicle in issue Toyota Hilux Vigo ABK 4333 showing it is registered in the first plaintiff's name.

Exhibit 4 is a copy of 3rd party insurance cover for the period 1 April to 30 June 2010 indicating that it is the first plaintiff who insured the Toyota Hilux Vigo ABK 4333.

Exhibit 5 is the motor vehicle policy for the Anti-Corruption Commission of Zimbabwe provided by Christopher Chisango.

As already stated the parties agree that the marriage has irretrievably broken down. The first plaintiff in his evidence indicated that the reason for that are the numerous irreconcilable differences between the parties. As a result the parties have not enjoyed conjugal rights since April 2010 and that they have lost love and affection for each other. On the other hand the defendant admitted that the marriage relationship cannot be salvaged although she blames the first plaintiff for deserting the matrimonial home and cohabiting with a girlfriend since April 2010.

In terms of s 5(1) of the Matrimonial Causes Act [*Cap 5:11*] this court is empowered to grant a decree of divorce on the grounds of irretrievable breakdown of the marriage if it is satisfied on the evidence provided that the marriage relationship between the parties has broken down to such an extent that there is no reasonable prospects of the restoration of a normal marriage relationship between the parties. As was clearly stated in the case of *Ncube v Ncube* 1993(1) ZLR 39 where parties are consenting to divorce it is not necessary for the court to hear evidence in order to ascribe fault for the breakdown of the marriage. I therefore find no cause not to grant a decree of divorce.

I now turn to the contentious issues.

THE TOYOTA VIGO REGISTRATION NUMBER ABK 4333

The dispute between the plaintiffs and the defendant is whether the Toyota Hilux Vigo Registration No. 4333 (hereinafter the motor vehicle) forms part of the matrimonial estate. This dispute is the very reason this court granted an order to join the second plaintiff in the proceedings. The first plaintiff's position was that the motor vehicle belongs to the second plaintiff the Anti-Corruption Commission where the first plaintiff is employed. The defendant on the other hand produced exh 3 the Registration book and exh 4 the third party insurance cover as proof that that motor vehicle belongs to the first plaintiff and therefore forms part of the matrimonial estate to be distributed. These documents exh 3 and exh 4 are in conflict with exh 1 a letter from the second plaintiff stating that the motor vehicle belongs to the second plaintiff. It is therefore for those reasons that I invoked Order 13 Rule 87(2)(b) of the High Court rules to allow evidence to be led from the second plaintiff as there was very little to choose between what the first plaintiff and the defendant had put before the court.

Christopher Chisango the General Manager responsible for Finance Administration and Human Resources in the Anti-Corruption Commission of Zimbabwe gave evidence on behalf of the second plaintiff. His evidence was largely if not wholly unchallenged. He

is the author of exh 1 which was hotly disputed by the defendant who alleged that Christopher Chisango could be a close friend of the first plaintiff and authored exh 1 in order to defeat the defendant's claim.

Christopher Chisango (hereinafter Chisango) told the court that he is among other duties, responsible for policy implementation and in specific terms is responsible for the motor vehicle policy applicable to all employees of the second plaintiff. Chisango tendered exh 5 the motor vehicle policy. In broad terms he said the Anti- Corruption Commission purchased motor vehicles and issued them to their members and or employees as a retention incentive. The employees or members are in various categories and different conditions would apply. In broad terms Chisango said each member or employee is eligible to be issued with a motor vehicle after serving the Anti-Corruption Commission for one year (hereinafter the commission). The second condition is that upon receiving the motor vehicle one must serve the commission for 4 years before assuming ownership of the motor vehicle. Let me refer to the specific applicable provisions of the motor vehicle policy para 18 which provides:-

“18 **PERSONAL LOAN VEHICLES**

- (a) An employee is eligible for a personal loan motor vehicle after one year of service with the commission provided funds are available.
- (b) The maintenance, repair, registration and insurance costs of the vehicle shall be to the employee's expense
- (c) Employees allocated personal loan vehicle shall be required to serve the commission for at least four years, and in accordance with their employment contracts.
- (d) The loan repayments/amortization shall be over a period of four years.
- (e) When an employee leaves the commission whether voluntarily or following misconduct prior to completing of the stipulation period above he/she shall be required to reimburse the commission an amount equivalent to the outstanding amortization/loan balance failure of which the commission reserves the right to repossess the vehicle notwithstanding that the vehicle will be registered in the employee's name.
- (f) All employees shall sign acknowledgement of receipt and acceptance of the condition stipulated above before granting of the personal loan vehicle.

- (g) No employee shall sell/dispose of the personal lean vehicle during amortization/loan repayment period.
- (h) Where such vehicle is accident damaged, stolen or rendered unusable by any means during the amortisation/loan repayment period, it shall be the sole responsibility of the employee to redress the same and still be liable to repay the loan in terms of the agreement”.

In my view the provisions of the motor vehicle policy exh 5 are clear and need no further elaboration. The fact that the first plaintiff has registered the motor vehicle in his name as per exh 3 and taken out a 3rd party insurance policy exh 4 for the said vehicle do not imply that the motor vehicle in issue belongs to the first plaintiff. It is not in issue that the first plaintiff joined the Commission in February 2008 hence became eligible to be issued with the motor vehicle in issue in February 2009. First plaintiff was indeed issued with the motor vehicle. In terms of the motor vehicle policy he has to serve the Commission for 4 years, that is, until February 2013 before he assumes ownership of the said motor vehicle. This means that when summons were issued to the first plaintiff had only served 1 year and 4 months and as at now the period is 2 years and 8 months. (See para 18(g) of the Motor Vehicle Policy).

I am satisfied that the Toyota Vigo Registration Number ABK 4333 does not form part of the matrimonial assets as it belongs to the Commission and therefore cannot be considered for purposes of property sharing.

DISPOSAL OF MOVABLE PROPERTY AS PER ATTACHED LIST TO THE JOINT PRE-TRIAL CONFERENCE MINUTE

The position taken by both the first plaintiff and the defendant in relation to the movable property, which is mainly household goods is bizarre to say the least. Both parties at the pre-trial conference stage declared no interest in the goods. This position did not change during the trial. The brief history of the issue of the household goods is as follows:-

The first plaintiff and defendant were residing in New Mabvuku after which the first plaintiff left the matrimonial house in April 2010 due to marital problems. Thereafter the defendant said as she is unemployed she was unable to pay for the rentals hence she left for her maternal home in Manicaland with the children. The first plaintiff then came and took all the household goods from their previous lodgings in New Mabvuku, packed them and put them in a storage warehouse in Harare. The first plaintiff is paying storage fees.

The first plaintiff's position is that the household goods should be awarded to the defendant since she has custody of the minor children. When advised that the defendant was unwilling to take possession of the goods the first plaintiff indicated he was also not prepared to take the household goods. No plausible reason was given. The defendant on the other hand indicated that she has no interest in the goods and is unwilling to take the goods even for the benefit of the minor children. Her reason is that the household goods are cursed, whatever that means, and she is not willing to associate herself with such goods in any way let alone to allow the children to have the goods. I am therefore baffled as to what order this court is being asked to grant. Since the first plaintiff is in possession of the goods and the defendant is unwilling to take possession of the goods the first plaintiff is entitled to use or dispose of the goods as he pleases.

Maintenance

I shall deal with the issue of maintenance both in relation to the defendant and the eligible children who are Ruramayi Christophily and Christabel Rangariraishe. In relation to Chiedza Catherine she is now a major although still dependant on the parents. She therefore cannot be a subject of this maintenance order, moreso as the first plaintiff has agreed to continue to pay for her full school account and other requirements. As regards Miriam Felistas she is not born to the first plaintiff and it has not been shown that the first plaintiff has a legal duty to maintain her.

The first plaintiff is employed as an investigations officer with the Commission and he earns a net salary as per exh 2 (b) of US\$317-12 per month. He is a war veteran and is entitled to a pension benefit of US\$110-00 per month which brings his net income per month to US\$427-12.

The first plaintiff listed his expenses per month as follows:

▪ Accommodation	-	\$ 50-00
▪ Telephone bill	-	\$ 15-00
▪ Water and Electricity	-	\$ 20-00
▪ Cigarettes	-	\$ 15-00
▪ Beer	-	\$ 15-00
▪ Fuel	-	\$ 50-00
▪ Food and greens	-	\$ <u>60-00</u>
Total		\$ <u>197-00</u>

According to the first plaintiff he is unwilling to maintain the defendant. He gave two reasons, firstly that she is rumoured to be employed as a clerk at Zongororo Primary School and that she is able bodied and should work for herself. In fact the following questions were put to the first plaintiff in relation to maintenance for the defendant:

“Q Why are you not willing to pay maintenance for the defendant?

A I do not want. I know what happened.

Q So you are able but you don't want?

A I am able but I am unwilling and she is also working”.

Under cross examination the first plaintiff conceded that he had no such proof that the defendant is employed and that he had just heard rumours to that effect. The defendant was clear that she is not employed at all and I find no reason to disbelieve her. All it means is that the first plaintiff has the means to maintain the defendant but is simply unwilling to do so even if the defendant can prove such a need. I find this to be untenable.

In terms of s 7 (1)(b) of the Matrimonial Causes Act [*Cap 5:13*] this court upon granting a decree of divorce may order payment of maintenance in favour of one or the other spouse. The defendant due to lack of resources has relocated to her rural maternal home. She has in her custody four dependent children (although one is not born to the first plaintiff). She is unemployed herself and indicated that she survives on piece jobs which are hard to come by. On the other hand the first plaintiff is employed and in my view should be ordered to pay maintenance for the defendant.

In relation to the two minor children the first plaintiff said he is willing to pay the full school account and medical bills only. The first plaintiff indicated that he is unable to pay the sum of US\$200-00 per month from his net salary of US\$317-12 per month. On the other hand the defendant indicated that the children are at school and the full school account is to be catered for. The children are in need of food, clothes, medical expenses among other needs. The duty to maintain the children financially falls squarely on the first plaintiff as he is employed. All what is left in my view is for the court to assess what is appropriate for the first plaintiff to pay as maintenance for the defendant and the two children from his income of US\$427-12.

In my view the other requirements listed by the first plaintiff like cigarettes and beer are really not basic requirements which can take precedent over the maintenance of his wife

and children (even ex-wife). In my view the first applicant is able to pay US\$50-00 per month per child and US\$100-00 per month as maintenance for the defendant giving a total of US200-00 per month. This would leave him with a net income of US\$207-00 which he can use for his own needs and pay for the other childrens' full school account.

As regards access rights, the parties are in agreement that the first plaintiff be allowed access each alternate school holiday.

Accordingly, it is ordered as follows:

1. A decree of divorce is hereby granted.
2. Custody of the two minor children Ruramayi Christophily born on 12 September 2000 and Christabel Rangariraishe born on 1 February 2002 is awarded to the defendant.
3. The first plaintiff is awarded reasonable access to the said minor children which shall be exercised each alternate school holiday. The access shall be exercised in consultation with the defendant.
4. The first plaintiff is ordered to pay US\$50-00 per child per month as contributory maintenance for the two minor children Ruramayi Christophily and Christabel Rangariraishe until each child attains 18 years or self-supporting whichever occurs first.
 - 4.1 The plaintiff is hereby ordered to pay each of the two minor children's entire school account including fees, levies, uniforms, extra curricula activities, and medical bills until each of the two minor children attains the age of 18 years or becomes self- supporting whichever occurs first.
5. The first plaintiff is ordered to pay US\$100-00 per month as maintenance for the defendant until she dies, remarries or is employed whichever occurs first.
6. The first plaintiff is ordered to pay the defendant's costs.

Khanda Company, 1st plaintiff's legal practitioners
Civil Division of the Attorney General's Office, 2nd plaintiff's legal practitioners
Mutumbwa, Mugabe & Partners, defendant's legal practitioners