

EDWARD MUCHUCHUTI
versus
TENDAI MUCHUCHUTI (Nee MAMVURA)

HIGH COURT OF ZIMBABWE
MAWADZE J
HARARE, 8, 9, 10 July 2013

FAMILY LAW COURT

Trial Cause

B. Mugomera, for the plaintiff
Defendant in person

MAWADZE J: The plaintiff husband issued summons out of this court on 24 November 2009 seeking a decree of divorce on the basis of irretrievable breakdown of the marriage, custody of the three minor children, and sharing of matrimonial property.

The parties married each other in terms of the Marriage Act [*Cap 5:11*] on 23 December 1995 in Harare. The marriage was blessed with three children namely Unotidaishe Benjamin born on 23 October 1996 and is in Form 4 at Goromonzi High School, Tinomudashe Edward Ebenezer born on 18 March 2002 in Grade 6 at Kyle School in Masvingo and Ishewavose David Glory born on 9 July 2008 and at pre-school with the defendant in Bulawayo.

The plaintiff who is the husband is currently unemployed as he was on 31 October 2012 dismissed from employment by Chloride Zimbabwe on account of misconduct. Currently the plaintiff is a shareholder, and Managing Director of a company called Edward and Benard Holdings which deals in consultancy work. The other shareholder is his brother Jacob. The company is in its infancy and makes no meaningful profit. It is therefore common cause that the plaintiff currently is of very little or of no means at all.

The defendant is employed by ZIMRA as a Senior Manager and is based in Bulawayo. It is common cause that she currently shoulders the burden of looking after the children. She has custody of the youngest child. Her employer pays school fees for the children. The plaintiff only helps in paying of the eldest child's school fees. She has the

plaintiff and the children covered by her medical Aid Scheme and takes care of the day to day needs of the children.

It is common cause that the parties own movable assets itemised in exh 5 which include household goods, 5 beasts and motor vehicles. The parties own an immovable property registered in their both names known as No 8962 Tynwald of Shortford Road Tynwald Harare measuring 290m² which is the matrimonial home.

In his declaration the plaintiff alleged that the marriage relationship between the parties has irretrievably broken down and that there are no prospects of restoration of a normal marriage relationship. The plaintiff gave number of reasons for this; which are;

- (i) That the defendant has denied him conjugal rights for a period of over 2 years
- (ii) That defendant had threatened physical violence and verbally abuses the plaintiff
- (iii) That the defendant is disrespectful and does not accept her mistakes
- (iv) That the defendant accuses the plaintiff of witchcraft
- (v) That the defendant is not emotionally stable.

Consequently the plaintiff alleged that the parties no longer live as husband and wife and now use different beds. It is the plaintiff's contention that he has lost love and affection towards the defendant.

In his prayer the plaintiff seeks a the decree of divorce, an award of custody of 3 minor children in his favour, sharing of movable property and 60% share of the immovable property.

In her plea the defendant disputes that the marriage relationship has irretrievably broken down and believes can be salvaged through counselling by pastors if the plaintiff submits himself to this process. The defendant disputes the reasons given by the plaintiff for the breakdown of the marriage. Instead she accused the plaintiff of denying her conjugal rights. The defendant alleges that their sexual problems are mutual and that the plaintiff is the one who ill-treats her, abusing her verbally and emotionally. She accuses the plaintiff of being very proud and beyond advice. The defendant insists she still loves the plaintiff. It is the defendant's contention that if a decree of divorce is granted she should be awarded custody of the 3 minor children, a share of the moveable assets and 35% share of the immovable property with the plaintiff getting the 20% share and the balance been awarded to the children. In addition to this the defendant also claimed US\$500 per month as maintenance for each of the minor children in addition to payment of the full school account and US\$300 per month as maintenance for the defendant until she dies or remarries.

Before the trial the plaintiff sought and was granted leave to amend the declaration. The plaintiff sought to have custody of the 3 minor children awarded to the defendant with him exercising access every last 2 weeks of each school holiday. The plaintiff offered to pay US\$30 for 2 children every school holiday and US\$50 for Ishewavose.

In terms of the joint pre-trial conference minute the following issues were referred to trial.

- “1. Whether the marriage between the parties has irretrievably broken down such that there are prospects for the restoration of a normal marriage relationship between the parties.
2. To whom should the custody of the minor children be awarded.
3. What is the equitable distribution of the matrimonial property.
4. How should the parties contribute to the minor children’s maintenance”.

At the commencement of the trial Mr *M.T. Chiwaridzo Attorneys At Law* who was representing the defendant renounced agency. The defendant opted to proceed with the matter unrepresented.

When the trial commenced on 8 July 2013 the issue of custody of the minor children and access rights were no longer contentious. This is so in light of the amendment to the plaintiff’s declaration. The trial proceeded on two remaining issues of irretrievable breakdown of the marriage, maintenance of the 3 children, sharing movable assets and the single immovable property.

The plaintiff gave evidence on 8 and 9 July 2013 on all the relevant items referred to trial. In brief he reiterated for reasons stated in the declaration that he no longer loves the defendant. Despite lengthy cross examination by the defendant he remained adamant that he has suffered enough in this marriage and no longer want to be married to the defendant. He produced exh 4 copy of Protection Order granted by magistrate court.

In respect of maintenance he reiterated that he is currently of no means and can only offer a paltry \$20 per month per child a maintenance and contribution of US\$100 per term as school fees for the elder child. He produced exh 2, Income & Expenditure statement for his company which shows that the company is not realising any profits.

In respect of the movable assets the plaintiff produced exh 5 as the basis upon which the movable property should be shared. In respect of the immovable property the plaintiff in

his evidence insisted on the 60% - 40% share between the plaintiff and the defendant respectively.

As already said the plaintiff was cross examined at length and stuck to his story. He almost broke down when he was giving evidence on the matrimonial problems between the parties. The plaintiff closed the case on 9/07/13 and matter postponed to 10/07/13 for the defendant's case.

When the matter resumed on 10 July 2013 the parties indicated that they had found each other and both wished the matter to proceed by consent. Mr *Mugomeza* for the plaintiff gave an outline on how the parties have resolved each and every item in dispute. This was confirmed by the defendant.

In light of the breakthrough there was no need to proceed further with the defendant's case except to record on evidence that the parties have resolved all the disputes. I also see the need to discuss in any meaningful detail evidence led before the court so far. All I can do is to proceed to grant a decree of divorce in terms of s 5 of the Matrimonial Cause Act [*Cap 5:13*] as I am satisfied that the marriage relationship between the parties has broken down to such an extent that is no reasonable prospects of the restoration of a normal marriage relationship between them. This is so despite the fact that the defendant insisted that she still love the plaintiff and even broke down as she confirmed the agreement reached between the parties.

I shall also proceed to incorporate the issues resolved by the parties in their agreement.

In the result it is ordered that:

1. A decree of divorce be and is hereby granted.
2. Custody of the three (3) minor children namely Unotidaishe Benjamin Muchuchuti (born on 23 October 1996); Tinomudashe Edward Ebenezer Muchuchuti (born on 18 March 2002) and Ishewavose David Glory Muchuchuti (born on 9 July 2008) is awarded to the defendant.
3. The plaintiff shall enjoy reasonable access to the three minor children which shall be exercised in in consultation with the plaintiff in the following manner:-
 - 3.1 every last two weeks of each school holiday
 - 3.2 during school term in respect of two elder minor children at boarding school during the school's consultation and visiting days
 - 3.3 on any other special occasions in consultation with the plaintiff.

- 3.4 the plaintiff shall meet the travelling expenses of all the children including a maid when the children travel to Harare from Bulawayo and back or from wherever the defendant would be based.
4. The plaintiff shall maintain the minor children in the following manner until each of the minor child attains 18 years or becomes self-supporting whichever occurs first.
- 4.1 in respect of all 3 minor children payment of US\$20-00 per month which shall be deposited into the defendant's bank account at the beginning of each month commencing on 1 August 2013.
- 4.2 In respect of minor child Unotidaishe Benhamin Muchuchuti payment of US\$100-00 per term as contribution to the minor child's school fees which should be paid into the defendant's bank account before the commencement of each school term commencing the third term in 2013 until the minor child completes tertiary education.
- 4.3 The maintenance order in respect of the all the minor children may be registered with the Magistrates Court.
5. The parties' movable property is distributed as follows:-
- 5.1. For the plaintiff
- 1 x upright fridge in Harare
 - 3 beasts
 - 1 x double bed
 - Isuzu double cab registration Number ACO 5700
 - 1 x Dehuller
 - 1 x Hammer Mill
 - 1 x dinning room table
 - 1 maroon lounge suite in Buhera
- 5.2 For the defendant
- 1 x 3 piece kitchen unit
 - 2 x 4 piece kitchen set chairs (table and four chairs)
 - 1 x 4 plate stove
 - 1 x 1 deep freezer in Harare
 - 1 x deep freezer
 - 1 x 5 piece maroon lounge suite in Harare

- 1 x 4 piece leather lounge suite
- 1 x 4 piece lounge suite in Bulawayo
- 2 x colour televisions
- 1 x DVD player
- 4 piece display unit
- 1 bedroom suite
- 4 x double beds
- 1 x Hammer mill
- 1 x Dehuller
- Glass coffee table
- 5 x double beds
- 1 x Nissan Bassara
- 1 x electric generator
- 2 beasts

5.3 The two beasts awarded to the defendant shall be delivered to the defendant's maiden home in Buhera by the plaintiff by 1 August 2014.

5.4 The 4 piece leather lounge suite used by the plaintiff in Harare shall remain in the matrimonial home in Harare when the plaintiff vacates the matrimonial home on or by 1 August 2014.

6. The plaintiff and the defendant are each awarded a 50% share of the movable property known as Stand 8962 Tynwald Township of Lot 1 of Shortford of Tynwald measuring 2775 square metres.

6.1 the parties shall agree on and appoint a registered Estate agent within thirty (30) days from the date of this order to value the said property or failing which the Registrar of the High Court shall within fifteen (15) days appoint a valuer from the Master's list of valuers.

6.2 The valuer shall evaluate the said property within ten (10) days of appointment.

6.3 The parties shall equally share the cost of evaluation.

6.4 The plaintiff shall exercise a usufruct over the said property until 1 August 2014 after which he shall vacate the property.

6.5 The defendant shall exercise a usufruct over the said property until the youngest child Ishewazvose David Glory Muchuchuti attains 18 years after

which the said property shall be sold by an appointed Estate agent by the parties, failing of which by the Registrar, by private treaty to the best advantage of the parties and the parties shall share the net proceeds in equal shares in terms of clause 6 above.

- 6.6 The defendant is given an option from 1 August 2014 up to the time the youngest child Ishewazvose David Glory Muchuchuti attains 18 years, to buy out the plaintiff's 50% share in the said property at the value assessed in terms of clause 6.1 and take transfer of the plaintiff's 50% share of the property at her own cost.
7. Each party shall pay its own costs.

Mugomeza & Mazhindu, plaintiff's legal practitioners