

ELSON MUCHECHETERE
versus
SOPHIA MUZA

HIGH COURT OF ZIMBABWE
CHIWESHE & MAKONI JJ
HARARE, 31 October 2013, 7 November 2013,
12 November 2013 and 2 December 2013.

T Madondo, for the appellant
Muchirevesi, for the respondent

MAKONI J: On 6 March 2013 the Maintenance Court made an order that the appellant contributes the sum of \$900.00 towards the maintenance of two minor children, namely Tafadzwa and Gift Muchechetere and the respondent. Dissatisfied with the order, the appellant filed the present appeal.

His main grounds of appeal, in summary were that:

- 1) The court a quo erred in calculating the appellant's monthly income resulting in it granting an order which he could not comply with.
- 2) The court a quo erred in making an order wholly sounding in money as opposed to an order that the appellant pay the children's school fees every term and buys school uniforms twice a year.
- 3) The court erred by failing to take into account that the respondent, who is gainfully employed, is obliged to contribute towards the maintenance of the children.
- 4) The court erred in awarding the respondent an unreasonably high figure as spousal maintenance taking into account respondent's circumstance.

At the hearing of the appeal, the respondent conceded that the magistrate had erred in calculating the appellant's monthly income. The record reflects that the appellant's evidence was that his monthly income totalled \$1 212.29 arrived at as follows

Net salary: \$870.29

War veterans allowance: 172.00

Rentals – Gweru House: \$170.00

Total: \$1 212.29

His total monthly expense amount to \$485,00. If this figure is deducted from his monthly income it leaves a balance of \$727.29. It is clear that the trial magistrate erred when he made an award in the sum of \$900.00.

After resolution of this issue, parties were advised to engage in discussion in order to arrive at an amicable resolution of the matter.

After the discussion the parties agreed on the following

- (1) The appellant is to pay school fees for the minor child Gift Muchechetere, every school term
- (2) The appellant is to buy school uniforms for the minor child once per year
- (3) The appellant is to buy casual clothes for the minor child once per year
- (4) The appellant is to pay the sum of 100.00 per month for the minor child's general upkeep.
- (5) Applicant is to pay school fees for Tafadzwa Muchechetere, who is now a major, on condition that he passes his A- level and secures a place at a tertiary institution.

The parties failed to agree on the amount to be paid with regards the general upkeep of Tafadzwa. The appellant offered \$50.00 per month whilst the respondent suggested \$100.00 per month.

The parties also failed to agree on the spousal maintenance. The appellant offered the sum of \$100.00 whilst the respondent prayed for the sum of a \$200.00 as ordered by the court *a quo*.

In terms of s 6 (1) of the Maintenance Act [*Cap 5:09*], the Maintenance Court may make an order against the respondent of such sum of money as it considers reasonable for the maintenance of the respondent. (my own underlining).

In terms of s 6 (2) (5), the court cannot make an order in favour of a defendant unless it is satisfied that the person against whom the order is sought is able to contribute to the maintenance of the dependent.

The issue for this court to determine is whether the appellant is able to contribute and what would be a reasonable sum for the maintenance of Tafadzwa and the respondent.

My view is that the amounts claimed by the respondent for herself and Tafadzwa are reasonable taking into account the economic environment that we are in. The respondent earns a gross salary of \$217.00. Her net salary varies depending on her obligations at the time. At the time of inquiry her net salary was \$87.96. This was due to a loan that she took to assist one of the major children to travel from a college outside the country. At the time of hearing the appeal her net was \$150.00. She lives with both the minor to major children. She pays rent and utility bills. She buys groceries for herself and the children.

On the other hand, the appellant earns a total of \$1 212.29. He remains with the sum of \$712,00 after his monthly expenses in the sum of \$455,00. Although he has taken the burden on paying school fees, the amount is not coming from his salary. He pays school fees from money paid through a scheme of the war victims compensation fund. My view is that he is able to contribute the amounts claimed from the balance that he remains with on his monthly income after taking into account his monthly expenses.

As a result I will make an order that the appellant contributes the sum of \$100.00 and \$200.00 towards the maintenance of Tafadzwa and the respondent respectively.

As a result I will make the following order

- (1) The appellant is to pay school fees for the minor child Gift Muchechetere, every school term
- (2) The appellant is to buy school uniforms for the minor child once per year
- (3) The appellant is to buy casual clothes for the minor child once per year
- (4) The appellant is to pay the sum of 100.00 per month for the minor child's general upkeep.
- (5) Applicant is to pay school fees for Tafadzwa Muchechetere, who is now a major, on condition that he passes his A- level and secures a place at a tertiary institution.
- (6) The appellant is to pay the sum of \$100.00 per month towards the general upkeep of Tafadzwa Muchechetere until he becomes self-supporting.
- (7) The appellant is to pay the sum of \$200.00 per month towards the maintenance of the respondent.

MAKONI J -----

CHIWESHE JP -----