

TAPIWA SHIRI
versus
OWEN VERE

HIGH COURT OF ZIMBABWE
MANUZNZU J
HARARE, 28 November 2019 and 23 January 2020

Assessment of damages

Plaintiff in person
Defendant in default

MANZUNZU J: The plaintiff sued the defendant claiming US\$300 000 for adultery damages being made up of US\$150 000 for contumelia and US\$150 000 for consortium. The action was initially defended until the 10th October 2019 when the court struck out the defendant's defence and ordered that the matter proceed unopposed. The matter was then set down on the unopposed roll with the plaintiff seeking judgment for damages as prayed in the summons. The only issue is the assessment of damages. As part of the record there is an affidavit of evidence by the plaintiff.

The background to this case is that plaintiff married Valerie Stella Shiri (the wife) on 28 April 1996. Five children were born of the marriage. The plaintiff is a lecturer and businessman. The couple live a Christian life with the plaintiff earning the position of church elder and the wife being a Sunday school teacher. The defendant is married and is a businessman. The parties fellowship together in the same church. They have known each other since bachelorhood.

In his affidavit of evidence the plaintiff took the court through a number of behavioural acts and incidents by his wife which he classified as unusual. He alleges adultery of his wife with defendant which through his investigations proved to be true. The wife also confessed to him. He was prepared to forgive her after she apologized. However, in 2017 under case No. HC 4105/17 the wife filed for divorce. She has since deserted the matrimonial home. Plaintiff holds the defendant responsible for the breakdown of his marriage. There are also several

matters in the magistrates court where the couple sue each other because of the growing differences. Their relationship has become so bad to the extent that the plaintiff says there was an attempt to poison him and kidnap him at some point.

Despite the huge amount of damages claimed in his summons the plaintiff has now toned down to claim in his affidavit of evidence the amounts of US\$20 000 for contumelia and US\$20 000 for consortium.

The only question is whether the amounts being claimed are reasonable.

There are a number of factors which the court must consider in assessing damages for the delict of adultery. The factors to be considered are:

- (a) the character of the woman involved
- (b) the social and economic status of the plaintiff (defendant)
- (c) whether the defendant has shown contrition and has apologized.
- (d) the need for deterrent measures against the adulterer to protect the innocent spouse against contracting HIV from the errant spouse, and
- (e) the level of awards in similar cases.

See *Khumalo v Mandishona* 1996 (1) ZLR 434 (H) where MALABA J (as he then was) said that it is a daunting task for a court to try to place monetary value on the pain and suffering inflicted on a spouse by the adulterous acts of another. He referred to the case of *Muller v Vink* 1972 (1) PGB 2 where COLMAN J said:

“These losses and humiliation cannot be truly measured in money; and the practice of our courts has been to make rough and ready assessments whose amounts vary according to the circumstances of particular cases. In no sense can the award, in any cases, be regarded even approximately as an assessment of the value of a happy marriage which has been broken up or the value of the faithless wife.”

In *casu*, there is no doubt that the plaintiff has suffered a lot of pain and humiliation in the face of the society. He has shown proof of actual loss of consortium in that the wife has not only sued for divorce but has left the matrimonial home. The respondent has not shown contrition.

The plaintiff has a high social and economic status in society. Previously decided cases show that courts have kept an award of damages on the moderate. Inflation has been taken into account. See the level of damages granted in the cases of; *Kasirowore v Muzenda* HH 129-90, *Mtungwazi v Sibanda* HB 67-90, *Ncube v Mgoni* HB 77-90; *Misho v Sithole* 1992 (1) ZLR 191.

The plaintiff seeks damages in United States dollars. However, the Finance (No. 2) Act, 2019 has in s 23 declared that the United States dollar is no longer legal tender alongside the Zimbabwe dollar with effect from 24 June 2019. Section 22 (1) (d) of the same Act makes all claims in United States dollars before 22 February 2019 to be deemed to have values in RTGS dollars at the rate of one –to-one to the United States dollar.

Given the circumstances of this case and the current value of the RTGS in the market I am persuaded to grant the plaintiff an amount of RTGS\$40 000 for adultery damages. Hence I accordingly granted an order as follows:

It is ordered that:

1. The defendant be and is hereby ordered to pay damages as follows:
 - (i) RTGS\$20 000 for contumelia.
 - (ii) RTGS\$20 000 for lack of comfort.
2. The defendant to pay costs of suit.