

EDDISON TAWONANHASI

Versus

ROSE TSHUMA

And

SITHABILE DUBE

And

NYENYEDZI MATIVENGA

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 11 AND 26 JUNE 2008

C Dube for applicant
D Vundla or respondents

Opposed Court Application

KAMOCHA J: The applicant seeks an order granting him custody of his son ET junior born on [date] 2006.

The applicant and Nyenyedzi Mativenga – the 3rd respondent went into an unregistered customary union in 2005 and started living together as husband and wife at number 4 Gayland Court, Bulawayo. A baby boy was born to the union on [date] 2006. He was named ET junior.

The union was however short lived. It was terminated in March 2007 resulting in the 3rd respondent going back to her parents with the infant. The parents lived at block 25/849 Mpopoma, Bulawayo.

In July 2007 the Maintenance Court issued an order by consent to the effect that applicant would be responsible for all the child's needs. He was to provide the basic needs in food stuff and health requirements. He also was responsible for 50% of the maid hired to baby sit the child. The applicant has been dutifully discharging his obligations in delivering the full groceries.

During that same month he applied for and was granted an order to have access to the child. Initially he exercised his rights for access to the child without any problem. However, trouble started when the mother of the child left this country on

23 September 2007 to go and work and live in South Africa. She left the infant with her mother – who is the 2nd respondent herein.

Soon after the mother of the child had left to go and settle in South Africa the grandmother went to work and live in Kwekwe. The grandmother left the infant in Bulawayo with its great grandmother thereby giving custody to her. The great grandmother could not tolerate the father of the child. She complained inter alia that the food that he used to buy for the child was not good for the child's health as it was modern food.

The old lady was clearly old fashioned and could not appreciate advantages of modern food.

What has been happening in this case is clearly undesirable. When the mother left to go and settle in South Africa the custody of the child should have been given to the natural parent – the father. He had paid lobola for the customary union. There was no need for the custody of the child to be given to a third party when one of the parents was available. A natural parent should not be deprived of his rights of custody unless he is found to be unworthy to do so. There should be very compelling reasons for doing so.

In casu there is no reason to do that. There is no evidence to suggest that the father is unfit to have the custody of his child. On the contrary the papers filed of record show that he is a responsible person who has got the means to do so as a business man. He has employed a maid to look after the child. He loves his child.

The mother of the child has abandoned the child in the custody of the grandmother who in turn has abandoned him to her mother – the great grandmother. There is no need for this undesirable scenario when a willing and able father is available. The custody of the child is with a fourth party – a most undesirable situation in the circumstances.

This court as the upper guardian of all minors cannot sanction such a situation. It must be stopped. In the result I would issue the following order.

It is ordered that:

The custody of the minor child ET junior born on [date] 2006 be and is hereby granted to his father – the applicant.

Lazarus & Sarif applicant's legal practitioners

Messrs Dube-Banda, Nzarayapenga & Partners respondent's legal practitioners