

DR VICTOR TSINDI RABVUKWA
and
RUDO RABVUKWA (NEE RUCHIYO)

HIGH COURT OF ZIMBABWE
KARWI J
HARARE, 23-24 July 2003 and 23 June 2004

Civil Trial

Mr *J Mambara*, for the plaintiff
Mr *Muskwe*, for the defendant

KARWI J: The parties were married in terms of the Marriage Act [Chapter 39] now [Chapter 5:11]. The marriage was solemnized on 30 July 1999. The parties have one minor child of the marriage namely V.A., born [day/month] 1998. During the subsistence of the marriage, the parties acquired certain movable and immovable property, namely:

- | | |
|----------------------------|-------------------------------|
| (a) navy blue lounge suite | (b) Techniques radio |
| (c) office furniture | (d) 1 set of kitchen utensils |
| (e) 1 bed | (f) blue lounge suite |
| (g) display cabinet | (h) coffee table |
| (i) deep freezer | (j) 1 desk |
| (k) micro wave | (l) some kitchen utensils |
| (m) stove | (n) 2 more beds |

and two immovable properties.

- (a) Stand No. 1163 Bannock Burn Township, Mt. Pleasant Heights;
- (b) Stand No. 1763 Knowe Township, Norton.

On 3 April 2002, the plaintiff issued summons in this court seeking the following relief:

- (a) a decree of divorce;

- (b) custody of minor child V.A., born [day/month] 1998 be granted to defendant;
- (c) plaintiff' to pay maintenance for the minor child in the sum of \$10 000 per month until the child attains the age of 18 years or becomes self-supporting whichever occurs first;
- (d) that division of matrimonial property be in accordance with paragraphs 9 and 10 of plaintiff's distribution; i.e.
 - (i) that plaintiff retains the following items as his sole and exclusive property:
 - 1. navy blue lounge suite
 - 2. Techniques Radio
 - 3. office furniture
 - 4. set of kitchen utensils

and that the defendant acquires the following items as her sole and exclusive property:

- (a) blue lounge suite
- (b) display cabinet
- (c) coffee table
- (d) deep freezer
- (e) 1 desk
- (f) microwave
- (g) kitchen utensils
- (h) stove
- (i) 2 beds

At the pre-trial conference, parties agreed that the plaintiff makes a contribution towards defendant's cost of litigation but the quantum was to be decided by the trial court and plaintiff agreed in principle to pay maintenance *pendete lite* for the minor child but the trial court was to determine the quantum.

Plaintiff believes that the marriage had irretrievably broken down and that there were no prospects of restoration of a normal marriage relationship for the reasons that parties had not shared conjugal rights for more than three months, that defendant had accused plaintiff of infidelity without just cause and that defendant had suicidal tendencies and on several occasions threatened to commit suicide. It was further mentioned in the declaration that defendant was fond of consulting traditional doctors, a habit plaintiff objected to and also that defendant was extravagant and had

failed to manage finances of the family. He also said that he no longer loved his wife. The defendant was of a different view. She believed that the marriage had not irretrievably broken down and that with proper marriage counseling and guidance from mature elders in the family the marriage could be salvaged. In his evidence in court, plaintiff very strongly stated that despite his wife's views, he no longer loved her. It is clear to me that the marriage in question has irretrievably broken down. This was clear from the plaintiff's attitude, two years after issuing summons for divorce.

The question of the custody of the minor child has been settled by mutual agreement. The defendant is to retain custody of the minor child V.A. subject to plaintiff being awarded the usual rights of access, more particularly for a weekend once every fortnight during school term and on alternate public holidays.

The issues which are before the court for determination are:

- (a) What would be a fair distribution of the matrimonial property both movable and immovable between the parties.
- (b) Whether the plaintiff should pay maintenance for both the defendant and the minor child as particularized in the defendant's plea and the quantum of maintenance for the minor child and the defendant to be paid by plaintiff.
- (c) The quantum of the contribution towards litigation costs to be paid by the plaintiff to defendant.

Dealing with the issue of the division of the movable property, it would appear to me that parties are not far apart in terms of their demands. As I mentioned above, the plaintiff feels that it would be just and equitable if their movable property is shared in terms of paragraph 9 and 10 of his declaration. The defendant does not seem to disagree with that approach, except that she demands the return of "one office desk, the child's piano and a sound system (technics radio)". Plaintiff opposed this mainly on the ground that he alone bought the items in question. I have analyzed the evidence adduced by both parties in this regard and also took into serious

consideration the provisions of section 7(4) of the Matrimonial Causes Act [Chapter 5:13] which are as follows:

- “(a) the income earning capacity, assets and other financial resources which each spouse and child had or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each spouse and child has or is likely to have in the foreseeable future, the standard of living of the family, including the manner in which any child was being educated or trained or expected to be educated or trained;
- (c) the direct or indirect contribution made by each spouse to the family, including contributions made by looking after the house and caring for the family and any other domestic duties;
- (d) the value to either of the spouses or to any child or any benefit, including a pension or gratuity which such spouse or child will lose as a result of the dissolution of the marriage;
- (e) the duration of the marriage.”

After taking the above provisions of the law into account, I am of the view that a distribution of the movable property suggested in paragraph 9 and 10 of the plaintiff’s declaration would be a just and equitable one. Over and above that it would meet the justice of this case, if plaintiff is ordered, as I hereby do, to retain the office desk and to return to defendant the child’s piano and the sound system (technics radio).

Concerning the division of the immovable property between the parties, I have taken into account the fact that the plaintiff is a medical practitioner and the defendant is a nurse. Their marriage lasted for four years. During that period they built two immovable properties, one in Norton and another in Mt Pleasant in Harare. Both houses are not yet complete. It is common cause that the plaintiff contributed directly to the building of the houses with very little, if anything from the defendant.

Defendant said in court that she did not contribute materially at all. She put her contribution at planting three plants at the Norton property and supervision of the construction in both cases. The plaintiff has offered his wife, the defendant, the Norton property, (known as stand No. 1763 Knowe Township). He would want to retain the Harare property, known as stand No. 1163 Bannockburn Township, Mt. Pleasant. The defendant has simply requested that both houses be sold and the proceeds be shared equally between the parties. Defendant submitted further that if the court was not persuaded by her submission, over and above the Norton home, the defendant be awarded 30% of the Mt Pleasant home in order to enable her to complete construction on the Norton property. From the evidence adduced in court, it would appear that save for a few items, the Norton property is almost complete and is habitable. Taking all the circumstances of this matter into consideration, it is just and equitable that the plaintiff be awarded as his sole and exclusive property, stand No. 1163 Bannockburn Township, Mt. Pleasant, Harare and that defendant be and is hereby awarded as her sole and exclusive property stand No. 1763 Knowe, Norton.

Regarding the issue of whether plaintiff shall pay maintenance for both the defendant and the minor child, I have taken into account what has been stated in the defendant's plea, that is -

- (a) plaintiff pays maintenance for both the minor child and the defendant in the sum of \$500 000 per month until the child attains the age of 18 years or becomes self-supporting whichever occurs first and until the defendant remarries or until she dies.
- (b) plaintiff pays fees, purchases school uniforms and attendant equipment and all school requirements for the minor child;
- (c) plaintiff retains the minor child and the plaintiff at his expense beneficiaries on his medical and dental aid scheme and also pays any shortfalls for the drugs, medical and dental care associated with the minor child and the defendant;
- (d) plaintiff pays rentals for the accommodation of the defendant and the

minor child until her own accommodation is complete.

From the evidence adduced in court, it is clear that the defendant is a young woman aged about 31 years. She is working as a nurse and has one child. She is asking that plaintiff on his own maintains their minor child and herself. She offers nothing by way of maintenance to her daughter, save for the fact that she is the custodian parent. She also wants plaintiff to pay medical aid, school related expenses for their daughter and her rentals. She also wants contribution by plaintiff towards payment of her legal costs in this matter. She also wants to be assisted in completing the construction of the Norton property.

On the other hand, plaintiff is a young man aged about 34 years. He is a medical doctor. He is amenable to maintaining his child at the rate of between \$70 000 and \$100 000 per month. He offers to pay crèche or school fees together with all reasonable educational expenses pertaining to his child. He also offers to pay school wear and casual wear and keep his child on his medical aid scheme. The plaintiff does not wish to maintain the defendant neither does he wish to keep her on his medical aid scheme, on the basis that she is working and capable of maintaining herself. He also wishes to contribute between 5% and 10% of the taxed bill of costs towards her cost of litigation.

In *Chiomba v Chiomba* 1992 (2) ZLR at p 198 and 199 A to E, MANYARARA JA quoted with approval Hahlo, South African Law of Husband and Wife, 5 ed. On p 363 to 364 where he writes:

“It remains to be said that with the emergence of the ‘working wife’ and ‘woman’s liberation’, the attitude of the courts towards the award of maintenance has been changing, the world over. Cases where maintenance is awarded to the husband, while still rare, are no longer unknown. The idea that marriage ought to provide the wife with a “bread ticket for life” is on its way out.

Not long ago, an “innocent” wife who obtained a divorce on the

ground of her husband's misconduct could count on being awarded maintenance until death or remarriage almost as a matter of course. Today, the courts are longer prepared to award maintenance to a young woman who has been working before marriage, and can be expected to work again after divorce, at least if there are no young children of the marriage. At most, if she has given up her job, she will be awarded a few months maintenance to tide her over until she finds a new job. Middle aged women who have for years devoted themselves full-time to marriage, are awarded 'rehabilitative maintenance' for a period sufficient to enable them to be trained or retrained for a job or profession. 'Permanent maintenance' is reserved for the elderly wife who has been married to her husband for a long time and is too old to earn her own living and unlikely to remarry. As Mr Justice Moorhouse remarked in the Canadian case of *Kohll*, 1969 1 OR 580:

'In this day and age the doctrine of assured maintenance of a wife in many instances is quite out of keeping with the times. The marriage certificate is not a guarantee of maintenance.'

At present, these trends may be more pronounced in Europe and America than in South Africa, but with the replacement of the 'guilt' with the 'marriage breakdown' principle they are likely to become more marked in South African, too."

I agree with the above view which is consistent with section 7(3) of the Matrimonial Causes Act (*supra*). I must also add that the trend is becoming more pronounced in Zimbabwe. The defendant is working and capable of working in the foreseeable future. She is therefore capable of supporting herself as she is young and belongs to the nursing profession. Plaintiff is also in the same position. I do not see any reasonable justification

for a request for maintenance by the defendant. However, I find that, plaintiff should maintain his minor child. He has offered to do that at the rate of between \$70 000 and \$100 000 per month. Because of the very high cost of living these days in our country, I am of the view that the plaintiff would adequately maintain his child at the rate of \$200 000 per month.

Plaintiff has requested a contribution towards her legal costs by the plaintiff in the sum of \$450 000-00. Plaintiff says he is prepared to contribute between 5% and 10% of the final taxed bill. Given that the defendant does not earn much as compared to plaintiff and the very high cost of litigation these days, I am of the opinion that it would be just and equitable if plaintiff contributes 15% of the final taxed bill.

In the result, it is ordered as follows:

1. A decree of divorce is granted.
2. Custody of the minor child, V.A., born [day/month] 1998 be and is hereby granted to the defendant with plaintiff having reasonable access to the child.
3. Plaintiff shall pay
 - (a) the sum of \$200 00 per month for the maintenance of the minor child until the child reaches the age of 18 years or becomes self-supporting whichever shall occur first.
 - (b) all school fees, levies, examination fees in respect of the minor child's attendance at crèche, primary and secondary school together with all reasonable educational expenses;
 - (c) retain the minor child on his medical aid;
 - (d) shall provide the minor child with both school and casual wear.
4. That the parties' movable assets be shared as per paragraph 9 and 10

of the plaintiff's declaration. Over and above that plaintiff shall retain the office desk and shall return to defendant the child's piano and the sound system (technics radio).

5. That plaintiff shall retain as his sole and exclusive property, stand No. 1163 Bannockburn Township, Mt. Pleasant, Harare and that defendant be and is hereby awarded stand No. 1763 Knowe Township, Norton as her sole and exclusive property.
6. Plaintiff shall pay 15% of defendant's total taxed bill as his contribution towards defendant's legal costs.

Messrs Musunga & Associates, plaintiff's legal practitioners.

Messrs Muskwe & Associates, defendant's legal practitioners.