

TENDAYI KAITANO

Versus

AGNES KAITANO

IN THE HIGH COURT OF ZIMBABWE
BERE J
BULAWAYO 4 & 13 SEPTEMBER 2007

B Moyo, for the plaintiff
Tsvangirai, for the defendant

BERE J: On 1 August 2007 the defendant's legal practitioners duly served a notice of set down for a pre-trial conference on the plaintiff's legal practitioners. The pre-trial conference date was given as 4 September 2007.

Prior to setting down the matter for the pre-trial conference, the defendant had on 14 June 2006 and through her legal practitioners filed synopsis of evidence and her pre-trial conference issues. The plaintiff had filed none of these and was therefore in breach of the court rules which require that such papers be filed before the holding of a pre-trial conference.

On the date set for the pre-trial conference, both the plaintiff and his legal practitioners were in default. The defendant and her legal practitioner duly appeared. Purporting to represent the plaintiff appeared Mr B Moyo who conceded that he had no proper instructions to represent the plaintiff. By his own admission, he merely appeared because his law firm had been acting as correspondent attorneys for plaintiff's legal practitioners.

It is abundantly clear that both the plaintiff and his legal practitioners were not only in default but had not filed any court papers in preparation for the pre-trial conference. No formal application was made by the plaintiff or on behalf of plaintiff to put things right. The benevolence appearance by plaintiff's correspondent legal

practitioners did not help the plaintiff as the legal practitioner had no instructions to appear for the pre-trial conference.

A litigant who initiates litigation must have the zeal to see that process through.

Accepted, this is a divorce matter and the courts must be cautious in providing a substantive remedy in the absence of the other litigant. However, this case clearly demonstrate lack of interest or lackadaisical attitude by both the plaintiff and his legal practitioners.

The defendant made an application to have the plaintiff's claim dismissed and have her counter claim set down on the unopposed motion.

In the light of what I have noted above, this application cannot be ignored. It is justified in the circumstances and it is ordered as follows:

1. That the plaintiff's claim be and is hereby dismissed.

2. That the defendant be and is hereby given leave to set down her counter claim on the unopposed roll.
3. That the plaintiff pays costs of suit.

Magodora & Partners, plaintiff's legal practitioners

Dazinger and Partners, Gweru, defendant's legal practitioners