

LERATO NYANDORO

Versus

NEWTON T. NYANDORO

IN THE HIGH COURT OF ZIMBABWE

NDOU J

BULAWAYO 28 JANUARY AND 10 FEBRUARY 2011

N. Mashayamombe, for the plaintiff

V. Ruwomba, for the defendant

Civil Trial

NDOU J: The plaintiff sued the defendant for divorce on the basis of irretrievable breakdown of her marriage with the defendant. She also sought custody of the two minor children of the marriage. She also claimed 15% of the defendant's half share of the proceeds from sale of the matrimonial home, being stand number 311 Oregon Avenue, Newton West, Bulawayo. The plaintiff also sought further ancillary relief in respect of the distribution of the movable assets.

It is common cause that the marriage between the parties has irretrievably broken down and there are no reasonable prospects of reconciliation. Both parties confirmed this in their testimony in this court. The parties have not been living together as husband and wife from the year 2000 to date i.e. about eleven years. The minor children are currently living with the plaintiff and the parties agreed that it is in their best interest that the status quo is retained.

The parties agreed that the sole immovable property described above be sold and the proceeds thereof be shared equally. The parties also agreed on the distribution of the movable assets acquired during the marriage and their agreement will be reflected in the draft order. At the commencement of the trial, there were two main issues outstanding i.e. the issue of the fraction of the defendant's half share of the proceeds that should go towards the maintenance of the children and whether the defendant should be given a chance to buy off the plaintiff her half share. The plaintiff, is staying with the three children including Rujeko Nyandoro who has attained age of majority but is still dependent on her. Rujeko is a student at Lupane State University and the plaintiff is claiming maintenance for her essential educational needs. Rujeko has just gone past her first term in her four year degree programme. In terms of section 8(3) of the Matrimonial Causes Act [Chapter 5:13] the plaintiff is entitled to claim maintenance on behalf of Rujeko even though she is a major. Section 8(3) provides:

- “(3) An appropriate court may direct that the maintenance order referred to in subsection 2 shall extend beyond the date when the child attains the age of 18 years.
- (a) If the child is or will be receiving education or training beyond that age or
(b) If there are special circumstances which justify such direction.”

The plaintiff gave oral evidence and tendered documents to confirm that notwithstanding Rujeko's majority status she is solely responsible for the child's fees and educational needs. This is a proper case for me to exercise my section 8(3) discretion and order the defendant to contribute towards the educational requirements of Rujeko. From the plaintiff's conservative projections, she will require the sum of \$4 870,00 for the next four years. This is based on the current tuition fee of US\$380,00 per semester plus incidental expenses.

As regards the claim for maintenance, as alluded above, the plaintiff claims a lump sum equivalent to 15% of the defendant's half share of the proceeds from the sale of matrimonial house. In terms of section 7(1)(b) of the Matrimonial Causes Act, *supra*, a party may apply to the court for an order regarding payment of maintenance by way of a lump sum or by way of periodical payments. The plaintiff has sought a lump sum payment on the following grounds. From the evidence the defendant is not gainfully employed and he confessed that there are indeed, no prospects of him securing employment. He has failed to secure employment over a number of years since he was retrenched from his previous employment. In any event, he attained pensionable age of 67 years. He has failed to utilize the parties' arable piece of land for market gardening. Over the years, the defendant contributed a meager US\$50,00 towards the maintenance of his three children. The plaintiff has successfully established that it is in the best interest of their children that the defendant makes a lump sum maintenance contribution. His share of proceeds from the matrimonial house affords him a realistic opportunity to make a meaningful contribution towards the maintenance of his children – *Sibanda & Anor v Sibanda* 2005(1) ZLR 97 (S) at 100-101. The plaintiff claimed 15%. The defendant initially offered 10% but during his testimony he conceded and said he is prepared to contribute the 15% claimed by the plaintiff on condition that the lump sum was used solely for the benefit of his three children. The plaintiff has a history of working hard for the welfare of the children and I have no reason to believe that she would abuse the lump sum given to her for the maintenance of the three children. A case has been made by the plaintiff for the lump sum of 15%. The plaintiff's undisputed testimony is that the two minor children Mitch and Webster require a new set of uniforms at the beginning of the year pegged approximately at US\$190,00. They also require school fees of US\$135,00 per term until their completion of advance level of study.

They also require stationery of about US\$200,00 per annum. The total average cost for both children up to the completion of advanced level is approximately US\$9 375,00.

Besides educational requirements there are groceries estimated at US\$250,00. There are also medical expenses, water and electricity with a total of approximately US\$700,00. It is, therefore, apparent from the above that the projected maintenance for the three children of the parties would be in excess of US\$33 000 for the next four years.

Further, the defendant has prayed that he be given the option to buy off the plaintiff's half share within six months. The plaintiff does not oppose this prayer per se, but she says the defendant should be given 30 to 60 days. Plaintiff would also want to be given the option to buy off the defendant. The defendant has stayed in the matrimonial house for several years and still resides there. It has been his home for several years. He is in the late afternoon of his life. It will be only fair to grant him the option to buy off the plaintiff. But, six months would not be a reasonable period to exercise this option. A shorter is desirable. In the event that defendant fails to exercise the option in given period, it is only fair that it be extended to the plaintiff. After all, she is staying with three children of the parties in rented accommodation.

Accordingly, it is hereby ordered that:

1. A decree for divorce be and is granted;
2. The plaintiff is awarded as sole and exclusive property the following:-
 - Oak bedroom suite
 - Queen size bed
 - Hotpoint washing machine
 - Four single beds (for the children)
 - One Panasonic television plus Panasonic home theatre system
 - Sony VCR
 - Hotpoint refrigerator
 - Capri deep freezer
 - Electrolux oven and hob
 - Electrolux microwave oven
 - Imported kitchen cupboard door with worktops
 - All kitchen utensils and gadgets
 - Dining room suite plus two side cupboards
 - Cream leather lounge suite
 - Two red easy chairs
 - 1 x 4 seater lounge chair and stool
 - Console table
 - Rugs and curtains

- Picture frames and mirrors
 - One centre table with drawers
 - Set of glass tables, and
 - 4 plate non-functional stove
3. The defendant is awarded as his sole and exclusive property the following:
- Two single beds
 - Double size bed
 - Floral lounge suite
 - Centre table and two side tables
 - Panasonic television set
 - Philips radio
 - Blue/green carpets
 - National refrigerator
 - Garden chairs and table
 - Garden tools
 - Plates, cups and pots
 - 2 plate stove
 - Lounge suite
 - Electric kettle
 - One drill
 - Telephone handset
 - Two kitchen cupboard doors, and US\$1 000 being value of one of the cars.
4. The plaintiff is awarded custody of the minor children, Mitch Nyandoro, a boy born 5 January 1994 and Webster T. Nyandoro, a boy born 21 November 1996, with the defendant afforded reasonable access to the said children.
5. The matrimonial house shall be sold and proceeds shared equally by the parties.
6. The defendant pays lump sum maintenance towards his three children the equivalent of 15% of his half share from the proceeds of the sale of the matrimonial house being stand 311 Oregon Avenue, Newton West, Bulawayo.
7. The defendant is granted an option to buy off the plaintiff's share within three months of the granting of this order, failing which the plaintiff is granted an option to buy off the defendant's share within three months of such failure by the defendant. In the event that both parties fail to exercise their respective options, the house shall be sold to best advantage.
8. The matrimonial house shall be evaluated by a reputable estate agent in Bulawayo for the purposes of paragraph (5), (6) and (7) of this order.
9. Each party shall bear its own costs.

Judgment No. HB 19/10
Case No. HC 2234/07

Mashayamombe and Co, plaintiff's legal practitioners
Bulawayo Legal Project Centre, defendant's legal practitioners