

HC 18250/99

MILICENT MUGABE
versus
KEVIN SHUPIKAI MUGABE

HIGH COURT OF ZIMBABWE
SMITH J
HARARE, 4 November 2002 and 16 April 2003

Ms *Shumba*, for the plaintiff

SMITH J: The parties were married to each other. There are five children born of the marriage. The eldest is a major but the other four are still minors. The plaintiff issued summons claiming divorce, custody of the minor children, maintenance for herself and the minor children and division of the matrimonial property. The matrimonial property included a house in Chinhoyi. On 7 June 2002 a divorce order was granted by consent. Custody of the minor children was awarded to the plaintiff and the defendant was ordered to pay maintenance in the sum of \$2 500 a month for each child and to retain them as beneficiaries on his medical aid scheme. Prior to the divorce the defendant had sold the stand in Chinhoyi. On 11 January 2002 a provisional order was issued prohibiting the defendant from selling the property in Chinhoyi and the Registrar of Deeds from registering the transfer thereof, pending the divorce action. However, it was too late. The defendant had already sold the property. The plaintiff claimed a share of the money received by the defendant. He, however, said that he had spent the money. Part of the money had been used to buy a house in Waterfalls which needed renovation. He was busy doing the renovations. The divorce order required the defendant to finish the improvements to the house before 1 October 2002 and postponed the matter so that the disposition of that property could be determined when the house was finished.

The plaintiff testified that no development was taking place at the house in Waterfalls. The proceeds from the sale of the property in Chinhoyi were not being used to buy materials for the house as he had

promised. The house was not registered in his name and no agreement of sale had been produced. She was living with their 5 children in a two-room flat which was undesirable. The Waterfalls property should be transferred into her name so that she could develop it. The proceeds from the sale of the property in Chinhoyi should be shared equally between the parties. The defendant had not produced any receipts or other papers to show that he had spent any money on improvements to the house in Waterfalls. Neither had he produced any documentary proof of how much he had been paid for the property in Chinhoyi. She said that she was always having problems with the schools the children attended because the defendant always paid the fees late. At one time the children had been expelled because of non-payment of the fees. When she instituted the divorce action in 1999 she had claimed maintenance in the sum of \$2 500 a month for each child. That was reasonable in those days but completely unrealistic now. The maintenance should be increased to \$20 000 a month for each child. Furthermore, the court order issued on 7 June 2002 did not require the defendant to pay the school fees or shortfalls on medical care. That omission should be rectified. She was paying subscriptions for the children to be on her medical aid scheme.

The defendant said that the papers relating to the purchase of the house in Waterfalls were with his previous legal practitioners. The purchase price for the house was \$1 200 000. He had paid \$1 million and still owed \$200 000. He had bought all the building materials for restoring the house in Waterfalls. He had received \$4,5 million from the sale of the property in Chinhoyi. There was only \$500 000 left, which he would use to pay the builders who were working on the house and buying paint and other incidentals. Photographs were produced which showed that the house is not habitable and still needed a lot of work to be done on it. The defendant said he hoped that the house would be habitable by the end of June 2003. He said that he wanted the house in Waterfalls to be transferred into the names of their 5 children. As regards

HH 65-2003
HC 18250/99

maintenance, the defendant said that his net salary was just over \$34 000 a month. The maintenance he was paying amount to \$10 000 a month which left him with \$24 000 a month. The car he was driving belonged to his mother and he was working on the farm his mother had acquired. He had been able to acquire a farm for their eldest child. He was prepared to accept liability for the crèche fees and schools fees for the children and for their clothes. He was also prepared to keep them on his medical aid scheme. The plaintiff, however, said that she was paying for the children to be on her medical aid scheme and she wanted to maintain that position.

It seems to me that it would be appropriate in the circumstances to order that the house in Waterfalls be registered in the names of the 5 children, in equal shares and that the plaintiff and the children be permitted to stay there. As regards, maintenance, the defendant says that he is working on his mother's farm. That being the case, I think that he could afford to pay a little more for maintenance. At today's prices \$2 500 for a child for one month does not go very far. The defendant has accepted liability for crèche and school fees and for buying the clothes the children need. The plaintiff wants to keep the children on her medical aid scheme. That seems logical because it makes it easier for her to submit claims for any medical or dental treatment that they get. It would seem that both parents have been paying to keep the children on their own medical aid scheme, which is an unnecessary duplication.

It is ordered that:-

1. With effect from 1 May 2003, the defendant pay maintenance in respect of the 4 minor children at the rate of \$3 500 a child until such child attains the age of 18 years or becomes self-supporting, whichever occurs first.
2. The defendant pay all crèche fees and school fees that are payable in respect of the 4 minor children and also pay for uniforms and

other items of clothing required by the said children.

3. The plaintiff keep the 4 minor children as beneficiaries on her medical aid scheme and the defendant reimburse her the cost thereof and pay any shortfalls or other costs payable for medical or dental treatment provided to any of the said children.
4. The defendant ensure that the renovations to the house at 5 South Way, Prospect, Waterfalls, Harare are completed so that the house is habitable before 1 July 2003 and that the property is registered in the names of the 5 children of the parties in equal undivided shares before 1 September 2003.
5. The plaintiff and the children of the marriage be entitled to live in the house referred to in paragraph 4 hereof.
6. The defendant pay the plaintiff's costs.

Tirizai-Chapwanya & Mabukwa, applicant's legal practitioners.