

AUSTIN MUZHANDAMURI

versus

MORISHA MUZHANDAMURI (NEE MADUNGWE)

HIGH COURT OF ZIMBABWE

ZISENGWE J

MASVINGO, 24 July, 14 September & 22 November 2023

M. Mureri; for the Plaintiff

Defendant; In person

**Civil Trial: Divorce**

ZISENGWE J: This is an action for divorce and ancillary relief. The parties are resigned to the fact that their marriage has irretrievably broken down and therefore that a decree of their divorce be granted. They are further agreed on issues relating to the custody, access and maintenance of one of their children who is still a minor and the maintenance of one their children who though has now attained majority, is still pursuing tertiary education.

Issues relating to the distribution of assets acquired during the currency of their marriage were equally settled at pre-trial conference (PTC) stage. However, there remained one sticking issue wherein parties remained poles apart and which sole issue was referred to trial. This relates to whether or not the defendant is entitled post-divorce spousal maintenance, and if so, the quantum thereof. The second issue identified at PTC namely the extent of the defendant's medical debilitation is merely a factor in arriving at the first decision.

The parties are married in terms of the Marriage Act, formerly [*Chapter 5:11*] which marriage has subsisted for the greater of two decades, it having been solemnised in April 2003.

Lately, however, the marriage has been rocked by disharmony hence the divorce proceedings. Whereas the plaintiff in his declaration blames, in rather bland terms, “loss of love and continual separation” for their marital disaffection and emotional estrangement, the defendant on the other hand points to plaintiff’s alleged adulterous relationships as the root cause for the down-turn of their marriage.

The marriage was blessed with three children and only the youngest, X (born on the 15<sup>th</sup> of December 2008) is still a minor.

In the trial which followed the parties expressed diametrically opposite views on whether or not an order for post-divorce spousal maintenance in favour of the defendant should be granted. Needless to say, the defendant insisted that she is entitled to such an order with the plaintiff expressing strong views to the contrary.

The defendant’s insistence that she deserves such an order of maintenance is primarily predicated on her health condition. She claims to be afflicted by a myriad of debilitating health issues, which health issues render her physically incapable of taking up any employment.

The parties were the sole witnesses for their respective cases. In her evidence the defendant, on whom the onus rested and therefore testified first, indicated that the plaintiff should be ordered to make monthly maintenance contributions in the sum of US\$ 500 for her sustenance. She also asked the court to order the plaintiff to retain her on his medical aid cover.

She testified that she has multiple bodily problems, some caused by injuries sustained in a motor vehicle accident and others occasioned by falling down when walking and seriously hurting herself.

She therefore testified that she endures serious chronic pain necessitating daily medication.

The defendant is 43 years old. She indicated that although she has an undergraduate degree in Development Studies and recently graduated with a Masters degree in that field, she is not capable of taking up any job nor is anyone prepared to employ her on account of her ailments. She indicated that she has no one to turn to other than the plaintiff and that her condition continues to deteriorate. She would further state under cross examination that so desperate is her condition that she cannot even sit for long hours or even perform simple

household chores and most importantly that she frequently experiences excruciating pain rendering her incapable of doing any meaningful work.

She produced a medical report dated 2 February 2023 which reads:

*“Permanent disability;*

*20% ankle*

*18% neck*

*With the two-percentage permanent disability is equivalent to 38%”*

She expressed the belief that the plaintiff was well able to meet a monthly maintenance contribution towards her well being because as far as she was aware, the plaintiff earned a net salary of US\$3600 as a Humanitarian Aid worker with the World Food Programme (WFP).

In his evidence, the plaintiff insisted that he had neither the obligation nor the means to cater for the defendant’s maintenance claim. He is 48 years old. He expressed the view that he had done his part to fund the defendant’s tertiary education with the hope and understanding that she would secure employment afterwards.

He further testified that he was not in a position to retain the defendant on his medical Aid Scheme, (which he said was in fact a medical insurance scheme) because his employer’s regulations prohibited that. He explained that whereas the Medical Insurance Scheme makes provision for spouses (even those under an unregistered customary law union) the same facility did not extend to former spouses.

He further testified that he was employed on a contract basis and that his current contract will be coming to an end at the end of December 2023 without any expectation of an extension.

#### **Whether the defendant is entitled to maintenance**

The law on post-divorce spousal maintenance is now fairly well-established and one of the leading cases on the subject is that of *Chiomba v Chiomba* 1992 (2) ZLR 197.

The following is captured in the headnote

*“...marriage can no longer be seen as providing a woman a bread ticket for life. A marriage certificate is not a guarantee of maintenance after marriage has been dissolved.*

*Young women who worked before marriage and are able to work and support themselves after divorce will not be awarded maintenance if they have no young children. If a young woman has given up work she will be awarded a short-term maintenance to tide her over until she finds a new job.*

*-Middle aged women who have devoted themselves to the management of the household and care of the children should be given “rehabilitative” maintenance for a period long enough to enable them to be trained or retrained for a job or a profession.  
-Elderly women who have been married for a long time and are too old to now go out earn a living and are unlikely to remarry will require permanent maintenance.”*

See *Alastar Walter Pollock Smith v Abigal Rosalyin Smith* SC 50/20;

The defendant at 43 years of age can be classified as falling within the “middle-aged women category”. What sets her apart, are of course, her various physical maladies. She does not claim support solely on account of her doomed marriage to the plaintiff but primarily on account of her debilitating medical condition.

I believe she is entitled to maintenance for a defined period until she finds her feet again, so to speak. Although she painted a gloomy picture of her medical prognosis going forward I do not believe that condition catapults her to the plane of elderly women requiring permanent maintenance.

Depriving her of maintenance altogether is inequitable and runs contrary to the intention of legislature set out in S7 of the Matrimonial Causes Act which requires the court to as far as is practicable place the parties in a position they would have been had the marriage not been dissolved. In the context of the matter, one would have envisaged the plaintiff attending to the defendant's needs. *“In sickness and in health, for better or for worse”* had the marriage not been dissolved.

It behoves the defendant, however, to recalibrate her skills set from the physical or manual based employment pursuits to those that best suit her condition. She should not rely on pity and be the beneficiary of charity. Disability of whatever percentage for her should not mean inability.

The defendant by notching up a couple of University degrees, her disability and physical maladies notwithstanding, has undoubtedly demonstrated not only her mental astuteness and academic prowess but also her impressive resolve and determination. This is the same determination that she should carry forward in her quest for independence and self-sustenance.

She needs to shake off the temptation of wallowing in self-pity. All she needs to is to redirect her talent and energies towards some income generating pursuits which require minimum physical exertion. She will be granted maintenance for a period to enable her recalibrate her skills set as earlier said. A period of 3 years is my view appropriate.

### **Medical Aid**

The plaintiff's assertions that his employer has migrated from a medical aid scheme to a medical insurance scheme whose scope does not cater for former spouses was not meaningfully challenged. The defendant's quest to be covered under the plaintiff's Medical Insurance Aid scheme cannot be sustained.

### **The quantum of maintenance**

In determining the quantum of maintenance, the court will be guided by a number of factors including but not limited to the income earning capacities of the parties, financial obligations and their needs. The court will also be guided by the various broad formula proposed in number of cases; see *Gwachiwa v Gwachiwa* SC134-86; *Lindsay v Lindsay* 1993 (1) ZLR 195 (S); *Hora v Tafamba* 1992 (2) 348 (S).

Regarding the income earning capacities of the parties, the defendant being presently unemployed and having no known source of income, it is solely the plaintiff's income which falls for consideration. In the latter regard, the plaintiff produced his pay slip which confirms that he is employed by the World Food Programme as a "Programme SCG". His total earnings amount to US\$ 3775.67 per month.

Due considerations will be had to the fact that from that amount, the plaintiff is to bear virtually the entire burden of supporting this family. Not only have the parties agreed that he will be required to meet the minor child's school and domestic needs but also that he shall meet Y's educational requirements. He produced receipts and invoices showing his financial commitments towards the two children's educational needs.

In the final analysis therefore, I believe an order of maintenance in the sum of US\$ 200 per month as post-divorce spousal maintenance payable by the plaintiff in favour of the defendant is just and equitable in the circumstances.

The following therefore is the order incorporating all issues including those that were agreed at PTC stage.

**IT IS ORDERED THAT:**

**1. Divorce**

A decree of divorce be and is hereby granted.

**2. Custody and access**

Custody of one minor child X, born 15 December 2008 is hereby awarded to defendant with the plaintiff being granted access to the said minor child which access is to be exercised during the first two weeks of every school holiday.

**3. Maintenance**

- a) The plaintiff is hereby ordered to contribute US\$ 200 per month as post-divorce spousal maintenance towards the plaintiff. This order shall be for a period of three years from the date of the granting of this order. This order shall sooner lapse if the defendant remarries or becomes self-sufficient whichever occurs first.
- b) That the plaintiff shall pay full school account for X which include;
  - (i) School fees payable to the school before each term and furnish defendant with proof thereof.
  - (ii) School uniforms as and when required but at least once a year.
- c) All other expenses required at school including groceries
  - (ii) The plaintiff shall buy clothes for the said minor child quarterly per year.
  - (iii) The plaintiff shall pay US\$150 for maintenance of the said minor child until the child turns 18 years or self- supporting whichever occurs first and should be deposited in defendant's Bank Account to be provided.
  - (iv) The plaintiff elects to also maintain and support the major child. **Y** born on **(12 March 2004)** who is still at school in a similar manner until the same child finishes tertiary education or is self- supporting whichever occurs first.

- (v) The plaintiff shall pay US\$200 per month as rentals directly into defendant's account to be provided.

#### **4. Division of movable assets**

4.1 The following movable assets are hereby awarded to the plaintiff.

- motor vehicle Toyota Belta Registration No AFH 6135
- 1 upright fridge
- 1 deep freezer
- 4 plate stove
- 1 bed

4.2 The following movable assets are hereby awarded to the defendant:

- motor vehicle Mercedes Benz B170 Registration No AE1 7138 (currently a non-runner)
- 4 plate gas stove
- gas tank
- TV and TV stand
- DSTV decoder
- microwave
- Queen size bed

#### **5. Division of immovable assets**

The immovable property being **House No. 2168, Eastlea, Zvishavane** registered in the plaintiff's name to be awarded in equal and undivided shares to the three children born of the marriage in equal shares.

- 5.1 The plaintiff shall pay transfer costs
- 5.2 The transfer to be done within month after granting of the decree of divorce
- 5.3 The defendant shall enjoy a usufruct at the said immovable property until she remarries or dies.

**6. Costs**

There shall be no order as to costs

ZISENGWE J

*Matutu & Mureri* -Plaintiff's legal practitioners