

IN THE HIGH COURT OF LESOTHO

In the matter of :

GETRUDE MASEOTLO SEOTLO - Applicant

v

GREGORY SEOTLO - Respondent

J U D G M E N T

Delivered by the Non. Mr. Justice M. P. Mofokeng on  
the 18th day of January, 1984.

This is an application for an order:-

" (a) Varying paragraph 2 (a) of the Deed of Settlement between the parties in CIV/T/17/74 dated 5th February 1979 so that :-

(i) Respondent shall maintain Applicant in the sum of M100.00 per month.

(ii) Respondent shall furthermore maintain the parties son Seotlo Seotlo in the sum of M150.00 per month.

(iii) Respondent shall furthermore maintain the parties daughter Lineo Seotlo in the sum of R150.00 per month.

(b) Costs.

(c) Further and/or alternative relief."

In the founding affidavit it is common cause that the parties in the present application have two minor /children ...

children and that the parties were judicially separated on the 5th February 1978 and in the process of so doing they entered into and signed a Deed of Settlement which was then made an order of this Court. Paragraph 2(a) of the said Deed of Settlement is phrased in the following words:

2.

" The custody of the minor children of the marriage be and is hereby granted to the plaintiff subject to the following conditions:

(a) Defendant shall have access to the children of the parties every last weekend of the month.

3.

Defendant shall maintain the plaintiff and the two minor children in the sum of R75.00 per month and such amount to be paid to the office of the Registrar of the High Court."

It is quite obvious that the paragraph complained of in this application is paragraph 3 and not paragraph 2(a).

When the Deed of Settlement was made an order of this Court the two minor children were eight (8) and nine (9) years respectively. Today the child who was eight (8) years at the time is in her last year of primary education and will begin her secondary education in the coming year. The child who was nine (9) years has since completed his primary education and has begun his High School education at St. Stephens.

/The ...

The former child has applied to St. Mary's High School. There is no running away from the fact that High School education is not cheap these days.

Applicant avers that her monthly bill for groceries, domestic help, children's clothing and other basic requirements approaches the figure of M200.00 per month. However, there are no receipts attached.

The applicant avers that she earns a salary of M327.00 p.m. as a receptionist at the Lesotho Agricultural Bank. To her knowledge the respondent earns a salary of M539.50 p.m. as a teacher/lecturer at Lerotholi Politechnic. Both figures given here are after tax has been deducted.

It is submitted that the respondent has the means and ability to pay the increased maintenance as prayed for.

The respondent, in his affidavit, avers that the applicant and the minor children do not only receive maintenance in terms of the Deed of Settlement which was made an order of this Court but he pays tuition and clothing for the minor children. However there are no receipts attached. He avers that the maintenance he gives to the applicant and the children is quite adequate. However, he does not dispute the applicant's allegations regarding the school fees, books and clothing of the minor children. He is prepared to continue

/paying ...

paying for the above mentioned expenses. He further admits that the cost of bringing up children has risen considerably in the past few years and that is the burden he has to carry.

The Respondent avers that the applicant's salary added to the maintenance he pays, is almost equal to his after those very deductions. However, when one considers that he still has to pay what he avers, in addition, the application for variation become unreasonable.

At common law it is the duty of both parents to maintain their children. The incidence of this duty in respect of each, will of course depend upon the relative means and circumstances and the needs of the minor children from time to time. (Kemp v Kemp, 1958(3) S.A. 736) As the respondent correctly and realistically put it, the cost of bringing up of children has risen considerably. The sum of approximately M30.00 p.m. per child awarded in 1978 for an eight (8) or nine (9) year old child might have seemed quite adequate at the time. But the children have grown and their needs have increased. One is at the High School already. Receipts were attached to a document entitled additional affidavit. The school fees paid at St. Stephen's Diocesan High School, Mhale's Hoek were attached showing sums of M140.00 (Jan. 25, 1983), M135.00 (April 6, 1983) and M100.00 (26/7/83). Respondent also avers that he pays tuition fees for the minor children. He has attached no receipts to  
/that ...

that effect. The only inference is that the applicant provides for the education of the other minor children as well. The respondent has not shown that he has any other commitments other than these two minor children born of the marriage with the applicant whom he is supporting at approximately M30.00 p.m. per child.

Both Counsel in this matter have been very constructive in their Heads of Arguments. Counsel for the respondent suggests that:

" A just course would be to direct that the Applicant should be responsible for the payment of school fees for the one child while the Respondent would be responsible for the payment of school fees for the other child and further maintenance for the children could be varied taking into account the nett income of each party and each to contribute proportionately to his or her income."

while Counsel for the Applicant has this to suggest:

" It is submitted that the following variation order would be fair and reasonable in the circumstances:

- (a) that Respondent pay school fees of Lineo Seotlo on or before their due date.
- (b) that Applicant pay school fees of Seotlo Seotlo on or before their due date.
- (c) that Respondent pay maintenance of M82.50 per month for each of the children.

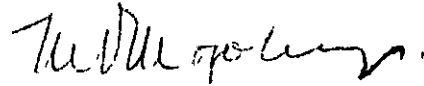
It would, therefore, seem to me to be by consent that

/there ...

there be an order of variation. The Court is not surprised by this attitude because good cause had been shown by the applicant.

The order is granted in the following terms:-

- (a) That Respondent pay all the tuition fees for the minor child of their marriage Lineo Seotlo.
- (b) That Applicant pay all the tuition fees for the minor child of their marriage Seotlo Seotlo
- (c) That Respondent pay maintenance in the sum of M50 00 per month per child
- (d) Each party to pay its own costs.



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J U D G E

For the Applicant : Mr. Moilola  
" " Respondent . Mr Matsau