

IN THE HIGH COURT OF LESOTHO

In the matter between

PASEKA JAFTHA NAMANE Plaintiff

and

'MAMORONGOE 'MANGOAJANE NAMANE Defendant

JUDGMENT

Delivered by the Honourable Mr Justice T Monapathi
Acting Judge on the 3rd day of March 1994

In this claim the Plaintiff asks for

- (a) A decree of divorce on the grounds of Defendant's adultery;
- (b) Custody of the two minor children,
- (c) Forfeiture of the benefits arising out of the marriage,
- (d) Further and/or alternative relief

This action was defended

On the date of hearing three witnesses were led namely the Plaintiff, the Defendant and Defendant's father. The evidence that took the whole day. This was not only wasteful of the Court's time but did not just demonstrate a correct approach to matrimonial matter where a marriage is but an empty shell. It is the duty of a litigants to cut short unduly prolix proceedings and to bring litigation to a speedy completion. It is equally in the interest of the parties and of the state to expedite litigation. Courts ought to guard against anything tending to delay proceedings. I need to quote the whole paragraph 6 of the Plaintiff's declaration and the reply thereto in paragraph 3 of the Defendant's plea to show how unwholesome it is sometime for practitioners not to strive to settle deserving matters.

PLAINTIFF'S DECLARATION

"6

With a settled mind to terminated the said marriage, Defendant has without reasonable cause done the following wrongful and unlawful acts to wit

- (a) Some time in 1983 Defendant committed adultery with one MOKEBE, whose further particulars are to Plaintiff unknown as a result of which a child was born, and Plaintiff condoned the said adultery;
- (b) On or around December, 1983, Defendant left the

matrimonial home without reasonable cause, and has despite numerous requests refused to come back to-date,

- (c) During this period of desertion, Defendant committed adultery with a man to the Plaintiff unknown as a result of which another child was born, and the said adultery was not condoned by Plaintiff," (my underlining)

DEFENDANT'S PLEA

"3.

AD PARA 6 THEREOF

Contents of this paragraph are denied and Plaintiff is put to the proof thereof, in as much as,

- (a) The said Mokebe is not known to the Defendant and the so called adulterine child has not been named, and it is not stated what happened to it,
- (b) In December, 1983, the Defendant left the matrimonial home because Plaintiff was not maintaining her and the children, instead Plaintiff continually assaulted the Defendant whenever he was from visiting his concubine 'MANTSOTISENG LETSIE with whom Plaintiff is now cohabiting and Defendant has not condoned that,

(c) On the 23rd day of June, 1987 Defendant gave birth to an illegitimate child named NEO and prays the Honourable Court to condone it is as much as Plaintiff's hands are not clean." (my underlining)

It became abundantly clear that the Defendant ought to have adopted a different attitude when it came to hearing of evidence to rebut the evidence of the Plaintiff. But that was not to happen.

Plaintiff was not only very convincing on the alleged adultery of the child born on the 22nd June 1987. I definitely formed an opinion that this other child NGOAJANE was most probably adulterine. It did not matter to me how much Plaintiff suggested that the child belonged to a marriage of "his father's cattle". It is to be noted that it is this child, which when Defendant was pregnant with, a lover of the Defendant wrote a letter to Defendant, inquiring whether Plaintiff had not been aware or had not suspected the child to be not his child (Plaintiff's), but was fathered by that man, (MOKEBE). Indeed the letter was not produced in Court. A family meeting was called following the incident. The parties agreed to reconcile. Plaintiff says he still regarded the child as adulterine. Anyway I did regard the adultery as having been condoned. I left the child in Defendant's custody for other good reasons. As said

before that the child NEO was adulterine this was common cause Plaintiff did not have much to do to proof his case The Defendant's father only came to seek to prove that the Plaintiff was a well-to-do man That he had inherited a large estate with small and large stock I suppose he was called in order to influence the Court's decision of the value of the estate to be divided I was not persuaded.

Since the Defendant's desertion the two of the minor children of the marriage namely MORONGOE, a girl born on the 22nd July 1978 and MOKONE, a boy born on the 20th May, 1981 have been in the custody of the Plaintiff Defendant only saw them once at school and nowhere else I believed the Plaintiff that the children were well cared for by their father I had no credible evidence or reason to urge me to find otherwise. This Court as an upper guardian of the minor children was satisfied that the custody of the children had for good reason to be left with their father the Plaintiff

That it is trite that adultery is a ground for divorce in this country was not questioned It was on this basis and as found proved above that I made the following order and informed Mr Nathane for the Plaintiff and Mr. Mathafeng for Defendant that reasons therefore would follow

- 1 The decree of divorce was granted on the ground of Defendant's adultery
2. Forfeiture of the benefits of the marriage was ordered in favour of the Plaintiff
3. Custody of the minor children MORONGOE AND MOKONE was granted to Plaintiff.
- 4 Custody of the minor child NGOAJANE was granted to Defendant

T. Monapathi

T MONAPATHI
Acting Judge

April, 1994

For the Plaintiff Mr Nathane
For the Defendant Mr Mathafeng