

CIV/APN/298/97

IN THE HIGH COURT OF LESOTHO

In the Application of :

NEO MOKUKU

Applicant

vs

MOLEFI MOKUKU

Respondent

J U D G M E N T

**Delivered by the Hon Mr Justice M L Lehohla on the 14th day
of April, 1998**

The applicant approached this Court by way of a Notice of Motion against her husband seeking an order :

1. Directing the respondent to contribute towards her costs of the trial for divorce presently pending before this court in the sum of M3000-00.
2. Directing the respondent to pay maintenance to the applicant *pendente lite* in the sum of M750-00 per month.
3. Directing the respondent to pay the costs of this application.

4. Granting the applicant further and/or alternative relief.

In support of her prayers the applicant avers in affidavit that the respondent is a lecturer at the National University of Lesotho. The parties are married by civil rites in community of property.

She also reiterated that she has instituted divorce proceedings against the respondent. The action is pending before this court.

The applicant points out that the respondent is the administrator of the parties' joint estate and that as such he is in law obliged to contribute towards the applicant's costs of the action in question. She goes further to state that the respondent is obliged to pay maintenance to her *pendente lite* as the parties have been living apart since 10th March, 1996.

She finally indicates that notwithstanding the respondent's obligation set out above the respondent fails and/or refuses to discharge that obligation.

In his opposing affidavit the respondent avers that the applicant has rendered herself not liable to maintenance in any circumstances because she deserted the matrimonial home without reasonable or justifiable cause. He undertakes to

willingly maintain her if the applicant returns to the matrimonial home.

In this attitude the respondent in his averment, and in turn reiterated in his counsel's heads of argument and oral submissions before this Court overlooks the fact that the issue whether the applicant deserted the matrimonial unreasonably or unjustifiably is the issue that stands to yet be determined in due course and in respect of which it would be impossible for this Court to deal with or determine as long as the respondent uses his marital power to deny the applicant access to court by means of using this ploy to refuse to contribute towards her costs of the action in question. In my view the merits and demerits of the action pending will only be determinable when the applicant's access to court has been facilitated by the respondent discharging his duty imposed on him by law to contribute towards his wife's legal costs. Otherwise his defence or opposition to this application amounts to an abuse of his position and function as the administrator of the parties' joint estate. It stands to reason, therefore, that reasons for his opposition to this application amount to no defence and as such are irrelevant to the issue presently before Court.

The Court views with disfavour the respondent's threat that if the applicant does not resume cohabitation at the matrimonial home he is not going to pay her

maintenance. This is an illogical view that does not even pay regard to the fact that even if the applicant were to comply with this insufferable requirement, contribution to her legal costs would still have to be met by the respondent unless he thinks that the applicant has no right to seek recourse to courts of law when her rights are trampled upon. It would be a highly unacceptable state of affairs if the law allowed a husband to use his power of administration of the joint estate as a form of punishment to ensure compliance by his wife even with things which are patently against her legal interests.

While there may be merit in the respondent questioning how the applicant has arrived at the respective amounts of M3000-00 legal costs and M750-00 per month maintenance he on his part in outlining expenses that he says he has to bear every month indicates that he has to service a car loan at M1800-00, pay for furniture at M500-00 and insurance policies at M320-00 and contents himself with merely saying after such payments he is left with virtually nothing without furnishing court with benefit of a rough picture of his nett earnings.

Indeed the whole exercise of payment of contribution towards costs and maintenance is not intended to be a burden on the respondent. While such costs are binding they are not intended to be a form of punishment. It is thus important that

in order to make a fair determination of the amounts payable the court has to be assisted by provision of material that bears on the issue at hand.

Now that despite invitation by Court to the respondent's counsel to give this information none has been forthcoming, the Court is left with no option but to look inwardly and see whether the expenses which the respondent alleges make it impossible for him to comply; when compared with his wife's plight don't in effect amount to luxuries which he should sooner forgo than fail to meet his mandatory obligation to his wife. Thus I have no hesitation in coming to the view that servicing of a car loan and paying for the furniture cannot stand in the way of the wife's right to have her legal costs met by her husband as his legally binding contribution as well as maintenance *pendente lite*.

While the amount of contribution towards costs can hardly be disturbed the amount of maintenance can indeed be tempered in the respondent's favour if sufficient information has been supplied to warrant such a move. The only tempering I can make in favour of the respondent in regard to contribution towards costs would be to extend the period over which to meet that obligation by applying the principle that he pays too little who pays slowly. I should hasten to indicate that this principle is disfavoured in all other respects in law for it is looked upon as

allowing undeserved leeway to debtors at the expense of judgment creditors. I have however allowed it in this case as an exception in order to avoid doing undue hardship to the respondent otherwise.

In the result therefore the respondent is ordered to

- (1) contribute to the applicant's legal costs in the amount of M3000-00 payable over a period of six months.
- (2) pay maintenance to the applicant in the amount of M600-00 per month.
- (3) pay costs of this application.



J U D G E
13th April, 1998

For Applicant : Mr Sello
For Respondent : Mr Putsoane