

IN THE HIGH COURT OF LESOTHO

In the matter between:-

MPEOANE MOKOKOMALI

PLAINTIFF

and

PAUL NTLOTLO MOKOKOMALI

DEFENDANT

JUDGMENT

Delivered by the Honourable Mrs Justice Hlajoane
Acting Judge on 5th Day of October, 2001

In this matter my brother Monapathi J had already granted divorce, and I only had to deal with ancillary prayers. The prayers stand as follows:-

- (a) Custody of the two minor children
- (b) Maintenance of the two minor children
- (c) Division of the joint estate

When counsel on both side appeared before me on the 2nd October, 2001 they informed the Court that numerous pre-trial conferences had been held with the view of assisting the Court by identifying areas of agreements as well as areas of disagreements.

Having lived on this planet for the many years that I have spent so far, in the Ministry of Justice, within the Judiciary, I could not wonder why so many pre-trial conferences had to be held. I believe people would agree with me that it is not always easy to sever or untie what had through a holy ceremony been joined, as marriage between two parties. It would not only be the position to those who would be entrusted with the task of doing the breaking but even the involved parties themselves.

I am saying all these because parties in this case managed to come to some sort of settlement in certain areas but could not make any compromise when approaching certain areas.

Areas of agreement were recorded as follows:-

1. Custody of two minor children of the marriage, namely Morapeli a boy, born in 1989 and Moliehi, a girl born in 1997, be awarded to the Plaintiff as their mother. Defendant be allowed reasonable access to the children.
2. Parties agreed that their immovable property situated at Morija and Teyateyaneng respectively be awarded to the minor children of the marriage aforesaid jointly and that they be registered as such jointly.
3. Further agreed that, as regards movable properties, that the following items be awarded to the plaintiff:-
 - (i) 8 piece Dining room suite
 - (ii) One 2 door fridge
 - (iii) Four lace curtains
 - (iv) Four ordinary Curtains
 - (v) Two nutristal pots
 - (vi) Two pointerware pots
 - (vii) Four stainless steel pots
 - (viii) Six table spoons
 - (ix) Six teaspoons

- (x) Two mugs
- (xi) Two table clothes
- (xii) One size 20 falkirk pot
- (xiii) One small falkirk pot
- (xiv) Five double blankets
- (xv) One Duvet inner and cover
- (xvi) Six plates
- (xvii) two gas cylinders
- (xviii) One gas heater
- (xix) One gas stove

The rest of other movable property not mentioned here to be awarded to the defendant. The three areas of agreement are thus made an order of this Court.

There are three areas where parties cannot come to any agreement, namely:-

- (a) Parties are unable to agree as to who is to remain in the parties' only house in Morija, as the site in Teyateyaneng is undeveloped.
- (b) No agreement on the amount of maintenance to be paid.

- (c) The last item relates to a wall unit, a three piece wall unit, as each one of them wants to keep it. It has not been disclosed as to what is so special about that unit. They may both be having some sentimental attachment to it.

After some lengthy argument it was eventually agreed by the parties that the wall unit be awarded to the children also, thus leaving us with the issue of maintenance and who has to remain in the house at Morija.

Considering that custody of the minor children has been awarded to the plaintiff it would only be logical to allow the plaintiff as mother of the minor children to remain in the house. The children are already used to the house and the environment at which it is situated. The divorce of the parents should not be allowed to jeopardize the children in anyway where possible. The High Court being an upper guardian of minors has to look at what is in the minors' best interest. I would therefore allow the plaintiff to remain in the house with the children. The defendant on the other side has asked that he too be allowed to stay in the same house but only occupying separate bedroom from the plaintiff's. This would mean having a common

furnished to the Court. Under cross examination he had showed that he used to run a business which unfortunately closed down some time ago. It came as a surprise to him and his counsel when plaintiff produced a cash receipt book which was handed in as an exhibit.

According to the cash receipt book the business is still operating and brings in a good income daily. The takings according to the receipt book for the 1st of October, 2001 came up to something well over two thousand maloti (M2,000.00).

The law is that both the father and the mother of a minor child are under a duty to maintain. There is therefore a duty cast upon the Court sitting in a matter to determine the issue of maintenance, to conduct a conscientious enquiry with everyone present to arrive at the appropriate and a just figure for the payment of such maintenance.

As was stated in **Makau and Makau CIV/T/360/90** by Kheola CJ, where the Court found out that the plaintiff as the father, had lied to Court by saying that his parents could look after their children better than his wife, who apparently were too old and illiterate to properly care for the children. The defendant has also lied to the

Court about his means of income by showing that his business was no longer operating but was proved wrong when his wife, the plaintiff, produced proof of sales from July, 2001 to date.

In the result, the plaintiff succeeds in her claim for maintenance in the amount of five hundred maloti (M500) per month per child, as the defendant has adequate means to support those two minor children. The offer of three hundred maloti (M300) per child by the defendant is rejected. Effective date being 31st October, 2001. The money to be paid to the Registrar of the High Court and shall be collected by the plaintiff who shall use it for the maintenance of the two minor children. Rooney J (as he then was) in **Ramokaka's case 1982-84 LLR 152** had this to say "no Court of Law should encourage the notion that a child is not only a joy and a blessing but a source of profit as well".

As regards the wall unit, it has already been agreed that it is to be awarded to the children because both parties failed to disclose as to what was so peculiar or so special about it that each one of them could feel so attached to it.

On the question as to who between the two parties is to remain in their only

house in Morija, I have already come to the conclusion that since the plaintiff is the one who by agreement has been awarded custody of the two minor children, on the authority of **Mosao v Mosao CIV/APN/293/97** by my brother Molai J, the interests of the children would be best served by leaving the children and the plaintiff at the parties' matrimonial home rather than uproot them to plaintiff's new place of residence.

The plaintiff showed that the defendant has not contributed anything towards legal fees in this case. The plaintiff is therefore also awarded costs.


A. M. HLAJOANE
ACTING JUDGE

For Plaintiff: Mr Phafane

For Defendant: Mr Masemene