

IN THE COURT OF APPEAL OF LESOTHO

HELD AT MASERU

**C OF A (CIV) No.24/2017
CIV/T/411/13**

In the matter between:-

'MAKABELO TJAMELA

APPELLANT

And

THABO TJAMELA

RESPONDENT

CORAM: CHINHENGO AJA
MOKHESI AJA
MTSHIYA AJA

HEARD: 19 November 2018

DELIVERED: 7 December 2018

SUMMARY

Divorce: Malicious desertion.

JUDGMENT

MTSHIYA AJA:-

[1] This is a divorce matter where, on 24 April 2017, the High Court granted the following order:

“ IT IS ORDERED THAT:

1. *Divorce is granted to Plaintiff on the basis of Defendant’s desertion.*
2. *Ancillary prays are deferred concerning the estate of the parties which may hopefully made an order of court.*
3. *There is no prayer for costs it being a matrimonial order.”*

[2] On 2 May 2017 the appellant filed a notice of appeal in this Court, with the following grounds of appeal:

“1.

*The court a quo misdirected itself and erred in law by granting Plaintiff a decree of divorce **without first establishing** that Plaintiff had **served** a Restitution Order on Defendant – Plaintiff had in fact failed to serve Defendant with a Restitution Order.*

2.

*The court a quo misdirected itself and erred in law in granting Plaintiff a decree of divorce without ascertaining that Plaintiff **had filed** a Restitution Order – Plaintiff had in fact failed to file a Restitution Order.*

3.

*The court a quo erred in law in granting a decree of divorce against Defendant when **Defendant has not** been served with a Restitution Order by Plaintiff.*

4.

*Paragraph 5 Plaintiff's **Affidavit of Non-Return of Service** (annexed to the Grounds of Appeal hereto), was calculated to mislead the Court by alleging that Defendant has not restored conjugal rights as ordered **without in any way showing** that Defendant had in fact been served with the Restitution Order. The Court misdirected itself by granting the divorce order on the basis of Plaintiff's vague allegation which was calculated to mislead the Court."*

- [3] On 22 May 2017, the respondent filed a Notice of Intention to oppose. There are no opposing papers in the record.
- [4] On 16 November 2018, the appellant filed a Notice of Withdrawal. The Court was accordingly advised of the withdrawal during the roll call on 19 November 2018.
- [5] The Court has accordingly noted that this matter was withdrawn on 16 November 2018.

MTSHIYA AJA
ACTING JUDGE OF APPEAL

I agree:

CHINHENGO AJA
ACTING JUDGE OF APPEAL

I agree:

MOKHESI AJA
ACTING JUDGE OF APPEAL

For Appellant: Adv. V.Kotelo

For Respondent: Adv. M. Ntlhoki