

CIV/T/261/2011

IN THE HIGH COURT OF LESOTHO

In the Matter Between:-

MPITI NAPO

PLAINTIFF

V

AU LEKOPA

1ST DEFENDANT

MAMOROA LEKOPA

2ND DEFENDANT

JUDGMENT

Coram : Hon. Molete AJ.

Date of hearing : 14th May 2012

Date of Judgment : 20th August, 2012

Summary

Action for damages – Husband in pending divorce proceedings – Suit brought against the wife’s parents for loss of consortium and contumelia – plaintiff seeking default judgment – Claim based on the wife having left matrimonial home to her maiden home – Claim unsustainable and unrealistic – Liability of the parents not proved - Default judgment refused and claim dismissed.

ANNOTATIONS

CITED CASES

Place V Searle (1932) KB 497 at 512

STATUTES

BOOKS

[1] The plaintiff's claim in this matter is against his father-in-law and mother-in-law. He says his wife's parents have deprived him of her consortium and therefore claims an amount of two Million Maloti for loss of consortium and contumelia.

[2] The matter was initially opposed by the defendants; but they failed to file a plea and by way of notice of bar plaintiff sought judgment by default before me. He gave oral evidence to prove his claim. It was his declaration that summarized the nature of his claim.

[3] In his declaration the plaintiff set out the facts which gave rise to the action as follows;

“On or around 10 December 2005 the plaintiff got married to the 1st and 2nd defendant's daughter Lerato Lekopa (now Matebang Napo). The consummation of the said marriage was never a happy one as the 1st and 2nd defendant interfered with the marital bonds of the plaintiff and his wife by creating distrust, destroying love and inducing plaintiff's wife to leave the matrimonial home and stay with them.

This caused so much trouble and trauma that the plaintiff's wife has instituted divorce proceedings against him as a result of the influence of the defendants."

- [4] The onus was therefore upon plaintiff to prove the following facts as alleged; firstly that the parents interfered with the marital bonds of his wife and himself; secondly that they induced his wife to leave the matrimonial home; third that they are responsible for her divorcing him, and finally that the quantum of the amount claimed is reasonable.
- [5] It is significant that in the divorce action, instituted by her wife in April 2011, she complained that,
- (a) Defendant removed the two minor children without consultation with her and took them to his parents in the Qacha's Nek district, causing the wife to resort to the court to restore custody to her under CIV/APN/298/2008.
 - (b) Defendant was cruel to plaintiff and the children. They had to use public transport to school and work each day despite the fact that the parties owned four vehicles.
 - (c) He is abusive to plaintiff and once pushed her out and locked her out all night.
 - (d) There are no prospects of reconciliation because plaintiff had fled the home and returned after attempts by the parents to

reconcile them. Only for the defendant to resume his abusive behaviour once again within a short space of time.

- [6] Plaintiff in that case therefore sought an order for restoration of conjugal rights failing which divorce and division of the estate, as well as custody. The defendant in turn issued the present summons against her parents in November 2011.
- [7] I asked plaintiff's counsel to justify both the claim and the quantum of damages in this matter. He could only refer to the general principle that both husband and wife are entitled to the consortium of one another, and each has a cause of "action against any third party who without justification destroys that consortium."¹
- [8] It is needless to say Mr Mariti for plaintiff could not justify the amount of damages claimed. It is a substantial amount. It is unrealistic, unsustainable and vexatious.
- [9] The court asked plaintiff why he sued the parents despite the explanation of his wife as to what caused her to leave home. The plaintiff's response was only that were it not for the parents his wife would still be with him. In my view there was no basis for that contention. The impression that plaintiff wanted to portray of his wife was that she was a passive and gullible victim of her parents, yet he testified that when her parents refused give their consent to the marriage the wife went ahead and married him anyway.

¹ Place V Searle (1932) KB 497 @ 512

[10] I cannot accept the reasoning that the defendants acted “without justification” in these circumstances. Even if the claim was a good one; the justification is contained in the divorce summons. The wife clearly alleges that she had to runaway from an abusive husband. The response of the plaintiff was to sue her parents for damages in an unprecedented amount.

[11] It would appear that the intended result is that an abused wife should not seek refuge at her maiden home; because if she does, she would expose her parents to inflated claims such as the present one. The parents in the same manner would be reluctant to grant shelter to their runaway daughters under threat of such ridiculous and unfounded actions. This is clearly contrary to public policy and cannot under any circumstances be justifiable. The court cannot be seen to encourage such misbehaviour. It is normal in our society for wives to seek to return to their maiden homes under similar circumstances.

[13] The plaintiffs claim is accordingly without any merit whatsoever. It is therefore dismissed.

L.A. MOLETE
ACTING JUDGE

For Plaintiff : Mr Mariti

For Defendant :