

IN THE HIGH COURT OF LESOTHO

In the matter between:

MPHEKELELI HOOHLO

PLAINTIFF

V

‘MAMAPHOESA HOOHLO

DEFENDANT

JUDGMENT

Coram : **Hon. Monapathi J.**
Date of hearing : **31st August 2011**
Date of Decision : **16th November 2011**
Judgment Delivered : **13th March 2012**

Summary:

Where parties separated. Where demonstrably it was without conflict on their part and attempt to reconcile thereafter not succeeded. And where there was only a half-hearted attempt to restore conjugal rights, the court is entitled to grant divorce and dissolve the marriage. The background to this marriage showed that it would be futile to order for restitution.

CASES CITED:

Makara v Makara 1978 LLR 30 at 34

- [1] The last time this matter came, it was on the day of August following the return date of Defendant (Mrs Hoohlo). Mrs Hoohlo was saying she had returned to her husband per order of restitution, and that she was prepared to return. And that the evidence indicated that she only attempted accompanied by a Deputy Sheriff. She said there was evidence indicating that there was such a return because she attempted to return to her husband at the place of her husband's parents at Roma that was where her husband stayed. Remarkably it was at the time that the husband was already working in Johannesburg.
- [2] Plaintiff (Mr Hoohlo), said that his wife had failed to return despite the court order. As I found as evidence was that Mrs Hoohlo also knew and must have known that Plaintiff works in Johannesburg at a bank. And that Mrs Hoohlo knew that his wife has just got employment at the bank in Maseru. In the circumstances Mr Hoohlo said his wife has not returned and on the other hand Mrs Hoohlo made the attempt. These were the circumstances and in the background that is before the return date of order of restitution.
- [3] We know through evidence that the father of Mrs Hoohlo had gone to Mrs Hoohlo's husband's place at Roma. We know as evidence that the father of Mrs Hoohlo that attended at Roma and as a result Mrs Hoohlo was removed from her husband's place and they never resumed any cohabitation since then. We know the attitude of the Defendant's father. We know how the parents of both sides later felt about what has just happened. This resulted in hardening of attitudes. So that it is important to note the contribution and the influence as the parties' parents how it brought about the disintegration of the marriage and in the relationship of both parties.

- [4] It is this marriage which had “substantially” not existed. A marriage that had never had an independent existence of its own. By substantial I mean that a marriage where a husband would say with a wife there would be a child where they would stay in a flat, for example, they would have furniture, things like that. Where they would fight or quarrel in their own home and things like. That is not a kind of marriage that we have had before this court between the parties.
- [5] What the court observed, to some extent, was this attitude of the parents that actually made it difficult in Mr and Mrs Hoohlo to reconcile. That at least one of the parents had had influence in making it difficult to reconcile. Mrs Hoohlo and Mr Hoohlo may have made statements or did make the same of how much they liked each other. That they loved each other and all they wanted was to reconcile. But it was clear that they were under extreme pressure.
- [6] Defendant felt it was Plaintiff’s mother who was difficult and Plaintiff said it was Defendant’s father on the other hand. I said the influence of the parents was important. But the most important thing was the attitude of the parties themselves. As I have said this marriage, I repeat, never had a quite an independent existence, that is a separate existence from the parties’ parents. Like I indicate why and how the marriage was not like other marriage, such as that they would have their own flat have their children whether they stayed in a small room like any young couple in this country. There was never been something like that all they spoke about their parents and nothing else. But before the court they showed how much they like each

other. I have spoken about circumstances where now they had separated one in Johannesburg one stays in Maseru. Despite all they say before this court I am not convinced that they made any good attempt to reconcile on their own.

[7] Speaking about attempts by the parties to reconcile on their own. We do not have a situation where one would travel from Johannesburg to go and have a discussion of some sort and vice versa in an attempt resolve their problems. If ever the attempt were made they were not successful, however, Mrs Hoohlo spoke of having made such attempts. I am saying they have failed. One would even suspect that there was some attempt but there was no seriousness. Here is the situation where they never succeed. May have been that there was that lot of love between them however it never succeeded to make them as husband and a wife.

[8] And then the question was how long would these go on. And then there was an answer to this question. It was suggested by Mrs Hoohlo's Counsel that an order that Mrs Hoohlo must leave her employment in Maseru and go and stay with her husband in Johannesburg. Look at the situation in which the Court is put to decide. It is that Mrs Hoohlo must be encouraged to leave employment and follow her husband as unsure as she must been all along about her husband's attitude. Quite so uncertain and where there is no guarantee that she will be received where she goes. That the court may encourage Mrs Hoohlo leave her job and follow her husband. This is what was suggested, when it is clear that the marriage has become a hollow shell in my opinion. I said the parties never had substantial marriage to speak of. There is principle of course. There is principle that I may issue a restitution

order as has been said by Counsel in these circumstances. What would be the use other than that of prolonging the agony of the parties. This makes it objectively unpractical in my opinion.

[9] I refused to re-issue a restitution order. This marriage must be dissolved and there is principle for this type of situation. In that case of *Makara vs Makara* 1978 LLR 30 at 34. The situation was almost similar to the present. In that case the defendant may have been disabled to return. The court granted the divorce to the Plaintiff. If the court is satisfied that there is no marriage in reality, there is no principle in our law to seek an attempt to reconcile. Nor for wanting to encourage people to reconcile when obviously there is no marriage and then there is no likelihood that these people would ever come together because they do not want to reconcile, because there may be professing love for each other when demonstratively there is none. They never had attempted to come together I declare this marriage be dissolved. The Plaintiff succeeds. Divorce is granted.

[10] The custody of this child is with Mrs Hoohlo and things like access will be arranged. Things of that nature. I emphasise there was no marriage. You cannot blame the parents because there was no one who made the parties to attempt make up their minds to compromise. I repeat despite to how much they say they love each other, because there is somewhere where love is be found somewhere love would be found under a common roof and bedroom.

[11] It is my decision that divorce is granted. There is no order for costs..

T. E. MONAPATHI
JUDGE

For Plaintiff : Mr. Letsika
For Defendant : Mr. Nteso/Mrs Kotelo
Judgment noted by Adv. S. E. Pule