

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CIV/T/653/2011

In the matter between:-

KHOBOSO 'MATSIKANE KHALI

PLAINTIFF

AND

MAROTHOLI KHALI

DEFENDANT

JUDGMENT

Coram : Hon. Mahase J.
Date of hearing : Various dates
Date of Judgment : 16th March 2015

Summary

Civil Procedure – Husband and wife – Judicial separation – Counter claim – Divorce sort on grounds of adultery – Maintenance pendite lite – Whether parties have each made out proper cases in support of their reliefs.

ANNOTATIONS

CITED CASES:

- **Jodaiken v. Jodaiken 1978(1) S.A 784**
- **Belir v. Minister of Health 1961(1) S.A. 629 (SR)**
- **Burrows v. Burrows 1963 (1) S.A 210 (and cases therein cited)**
- **S. v. Pitsi 1964 (4) S.A. 583**
- **Fletcher v. Fletcher 1948(1) S.A. 130 (A) 137**
- **Litseko v. Litseko 1979 (2) L.L.R 370**

STATUTES:

- **Deserted Wives and Children Proclamation of 1959 (as amende 1971 and 1977)**

BOOKS

- **The South African Law of Husband and Wife – H.R. Hahlo 4th and 5th Editions.**
- **Contemporary Family Law, W.C.M. Maqutu 245**
- **Family Law Through Cases in Lesotho, M. Mamashela page 294**

- [1] Parties herein were married by civil rites and in community of property on the 7th April 2007. Two children, who are both girls were born out of the parties' marriage. The parties' marriage was a happy one from inception. They however started to experience problems around the year 2011.
- [2] Subsequently, the plaintiff then instituted proceedings for judicial separation. She had also asked the court to award to her custody of their minor children; as well as for an order to the effect that the defendant must deliver to her leases of their properties situated both in Maseru and Qacha's Nek, and that he also be ordered to return to her a motor vehicle of H0300.
- [3] She has also sort an order of court directing the defendant to pay rental for her, maintenance in the total sum of M27,000.00 (twenty seven thousand maloti). This sum of money is inclusive of plaintiff's and their children's maintenance.
- [4] The defendant later filed a counter claim for divorce on the grounds of plaintiff's adultery. The proceedings indicated above were by consent argued or dealt with holistically.

- [5] The defendant contends that the plaintiff has not defended the counterclaim and has therefore asked this court to grant him a decree of final divorce. The plaintiff, denies this fact and alleges that she has opposed the counterclaim.
- [6] Be that as it may, each party blames the other for the disintegration of their marriage. The plaintiff's case is that the defendant had two adulterous relationships with two ladies; namely Ntsoaki Leisanyane and Tlaleng Mosoeu with whom he has fathered two children, born of each lady.
- [7] Put conversely, it is the plaintiff's case that the defendant maintains the said two relationships concurrently. She alleges that she has not condoned the defendant's adulterous.
- [8] There is a dispute over the above issues because the defendant denies at least the existence of one of the said relationships. The plaintiff on the other hand, alleges that the defendant has admitted this adultery in his plea; at paragraph 2, page 7.
- [9] The defendant testified that the plaintiff has an adulterous relationship with one Thana Moseme. The plaintiff denies this.
- [10] There are facts which are of common cause between the parties. Same have been summarized in the respective written submissions filed of record on their behalf.

- [11] The brief such facts are that their marriage and the existence of children born of their union. The fact that the parties are no longer residing or staying together as husband and wife although they have not formally divorced, nor have they been judicially separated.
- [12] That the parties' children reside with their grandmother while the plaintiff resides somewhere else and not with their children. That despite this, the defendant is and has always been maintenance his children in all respects as well as providing daily transport for their schooling.
- [13] I pause to observe that even though the plaintiff insists that she and her minor children reside at Maseru East with her own mother; it has since turned out in evidence before this court, that it is not true. As indicated above, plaintiff stays somewhere else not with her children and not at Maseru East.
- [14] The plaintiff has insisted throughout her testimony and in her written submissions to portray a false picture that she and her children reside with her own mother at Maseru East, and about the fact the defendant is not maintaining here and their minor children.
- [15] It has ultimately transpired that in fact the plaintiff resided at Ha Mabote in Maseru, while her children reside at Maseru East at the school premises where the plaintiff's mother was employed. Although she ultimately concede that in fact, the above is the true

position, it remains a fact that she has not been very candid to court about the said issues.

[16] For instance, she ultimately conceded that in fact, the defendant has always been maintaining his children in the way described above and that he has always provided them with transport for school, and other necessities of life such as their medical needs.

[17] She further alleged that the standard of life of her children; which she explained as having been luxurious has since changed. While one cannot deny this, that is no justifiable excuse for her to have not been candid to court.

[18] The plaintiff's case has also been that the defendant has deserted her because the defendant had moved back to his parental home to stay with his mother at Hills view, living her behind at the rented flat. This also turned out not to be true because, as per defendant's evidence, he was forced to vacate the flat which they had rented out because he had experienced financial problems and so was evicted from that flat by his landlord. To this extend refer to annexure C page 17 of the paginated record.

[19] According to defendant's testimony it was then that the plaintiff who elected not to move with him into their mother's house at Hills View; went to stay at Mabote where she had rented out a house.

- [20] Clearly, in this occasion, it was the plaintiff who first deserted the defendant when the defendant had financial constraints thereby failing to pay rental for the flat which they had rented. This has not been denied.
- [21] It has also been defendant's testimony that contrary to what the plaintiff said, the plaintiff has access and authority to their joint bank accounts hence why the plaintiff was able to draw some monies from that bank account for her to carry on with her life. That at one time, she had drawn a cheque for an amount of M20,000.00 and M5,000.00 respectively in favour of Thana Moseme. The said cheques were handed into court as exhibits and were signed by the plaintiff. The cheques were drawn from the bank account of an entity called Hill Sands Enterprises (PTY) LTD which is the parties' business.
- [22] The defendant's further testimony is that the plaintiff carried out some business without his consent after she had deserted him; and that he never interfered with her in the affairs of this business even though she used and traded under or as the joint family entity named above. This was supported by a purchase order exhibit B and quotation dated the 29th August 2011. The quotation is dated the 28th July 2011.
- [23] The defendant then resigned as a Director from the Hill Sand Enterprise on the 5th September 2011 because, according to him, he knew nothing about the business which his wife (plaintiff) was carrying out and operating using the families' trade name.

[24] The above testimony of the defendant has not been denied. In fact, plaintiff concedes that she carried on with this business in which she sort the assistance of Thana Moseme without her husband's approval or consent. Refer to subparagraph 2.3.6 (which should read 2.3.6 as this numbering has been duplicated) of plaintiff's written submissions.

[25] The above also confirms or butterresses the defendant's allegations in his counter-claim and in his written submissions. He has denied that he had any relationship with one Tlaleng Mosoeu. He however conceded that he had a relationship with Ntsoaki Leisanyana and has asked the court to condone same. On the other hand, the plaintiff has made a bare denial with regard to her adulterous relationship with Thana Moseme. She has therefore not asked this court to condone same.

[26] The contents of the plaintiff's written submissions give an impression that the plaintiff knew a lot about this Thana Moseme and his businesses. This creates a lot of doubt and question about their acquaintances especially in the light of the defendant's testimony that plaintiff and Thana Moseme had an adulterous love affairs, about which Thana Moseme's wife once confronted the defendant complaining that plaintiff was destroying her marriage. This remain unchallenged.

[27] The plaintiff has testified about the properties which she and the defendant alleged own. She further argues that the defendant earns about M40,000.00 but she has not adduced or supported any evidence to proof this. She also alleges that the defendant and he owns certain properties listed in her

declaration, stating that the defendant enjoys a very high income (whatever this means). Refer to paragraph 8 and 9 of her declaration.

[28] The defendant has denied that he earns the sum of M40,000.00 but he clearly told this court that he earns the sum of M28,000.00 per month.

[29] The defendant has been very candid to this court because he disclosed that the rest of the other property in Qacha's Nek and Maseru still the estate of his late father and that the executions of his father have not completed the liquidation of same; as such it is not correct that he has inherited some of his late father's properties. He testified that he has always been maintaining his children, and that he cannot be able to maintain his wife with the sum of twenty thousand maloti per month.

[30] The plaintiff has throughout her testimony not produced any documentary or any kind of evidence to support her claim of the M20,000.00 per month as maintenance she requested this court to order the defendant to pay to her. Neither has she done so in respect of the M7,000.00 per month she requests on behalf of their minor children.

[31] This is aside from the fact that she has conceded that the defendant religiously maintains his children in the way that has been disclosed above. She has clearly, not been candid to court about her not staying with her minor at her mother's house. In short she has failed dismally to support and or to justify the basis upon which she claims that huge sum of money as maintenance for her and their children.

[32] As it is, no one knows how much rental she pays at Ha Mabote. What we know for a fact is that she has been carrying on with business as indicated in documents presented before court as well as her having had access to their joint bank accounts from where she has been withdrawing some monies.

[33] The plaintiff denies that the defendant is an employee at Khali Hotel but she has not disclosed the defendant's position thereat. However, even assuming without conceding that he is an employee thereat, the plaintiff has not made any attempt to convince this court that the defendant's salary is such that he could afford to pay the total sum of M27,000.00 as maintenance on a monthly basis. Bearing in mind that the plaintiff is the one who deserted the defendant when the defendant had financial constraints to pay rental for the flat they had rented, and also that she refused to move with the defendant to his mother's house; it becomes very difficult to comprehend the foundational basis upon which the plaintiff claims payment of maintenance to or for her in the exorbitant sum of twenty thousand maloti per month.

[34] It is trite law that, generally, the duty of support is a reciprocal one, but in the instant case, nowhere has the plaintiff indicated what role she played in the support and maintenance of her children, at least. She is on record as having testified that around the time when they had to vacate the rented flat, she was a student but then she went on to deny that the defendant did not experience financial constraints at the time. This, she failed to substantiate. She instead decided to desert the defendant to rent a house at Ha Mabote.

[35] The plaintiff has in fact claimed maintenance in the total sum of M20,000.00, and this among others includes an amount of M4,000.00 for

rent. This latter sum of money for rental is equivalent to what they were paying for rental of the flat which they had just vacated through lack of funds to pay same, if the plaintiff was acting rationally and like a reasonable parent.

[36] In fact all of the itemized items and amounts of money for which the M20,000.00 is requested by the plaintiff from the defendant as her maintenance, no including that of their children is exceedingly unreasonable to say the least.

[37] Even the M7,000.00 claimed on behalf of the parties' minor children's maintenance is unreasonable regard being had to the unchallenged evidence of the defendant that he has always been maintaining his children in all respect even providing daily transport to and from school as well as providing for their daily lunch boxes and monthly groceries. This he has been doing since around the year 2011 when plaintiff took away the said children to her maternal mother's home, to date.

[38] Obviously the plaintiff does not seem to take into consideration the fact that, should her prayers in this regard be granted, then this will effectively paralyse the defendant as he will be left with no means for his livelihood and may ultimately not be able to carry on and fulfil his other financial obligations.

[39] The plaintiff is missing a crucial point; namely that one of the legal consequences of marriage, whether in or out of community of property, is that spouses owe each other a reciprocal duty of maintenance according to

their means. Also, it is trite that the duty of maintaining their children is a common one to the parents. Each parent has to do it according to one's means.

[40] The plaintiff has claimed an exorbitant sum of money as maintenance for herself and for their minor children. This she has done without having computed same such that the defendant was unable to plead to this issue. She only belatedly made an attempt to compute and break same down in her written submissions.

[41] One cannot deny that even though in modern law, the duty of support is reciprocal; in practice such a duty rests primarily on the husband. Be that as unreasonable demands as a disguise for her maintenance and or support, including that of their minor children where there are any.

[42] There are authorities to the effect that where a wife is the deserted she cannot claim support from her husband. Vide: **Behr v. Minister of Health 1961(1) S.A. 629 (SR)** and other authorities therein cited.

[43] The duty of support of the husband for his wife and children normally includes, in deserving cases, accommodation, food, clothes, medical and dental attention, as well as legal costs in divorce and judicial separation. The issue whether such a duty should be extended to cover other actions, e.g. costs of any action, reasonably brought or defended, whether between the spouses or between a spouse and a third party or to the costs of the defence in criminal proceedings is a moot point.

[44] In the instance case, it is undenied that it is plaintiff who deserted the defendant taking away with her their minor children to her maternal mother's home; while she went to rent and reside at a rental house at Ha Mabote. She did not take along her minor children to Ha Mabote. She has also not produced proof of any kind of support her claim of the sum of M4,000.00 (four thousand Maluti); neither has she given any reasonable justification in respect of the maintenance claim and the amounts sort in respect of the other items listed in her court papers which she allegedly claim for herself and on behalf of their minor children.

[45] The said amounts are not supported by any reasonable foundational basis regard being had to the fact that, the school fees for the parties' oldest child who attends school at Maseru Preparatory School of the sum of M9,025.00 per term (which is a period of about three months) far exceeds the claim of M7,000.00 per month which plaintiff claims as support or maintenance for their children. This school fees is being paid by the defendant as well as that of the other younger child in the sum of M1,100.00 per term.

[46] I now deal with the plaintiff's prayer for judicial separation. The plaintiff first approached the court claiming as against the defendant an order for judicial separation a *mens at thoro*. However, the grounds for which she so sort as indicated above; namely that of defendant adultery, with two ladies Ntsoaki Leisanyane and Tlaleng Mosoeu is normally not a ground for divorce.

- [47] As has already been indicated above, the defendant denies his alleged adulterous relationship with Tlaleng Mosoeu; but admits that with Ntsoaki Leisanyane for which he has formally applied for condonation.
- [48] There is no alternative prayer sort by the plaintiff in her summons in which he claims judicial separation. It is a matter of common cause that, it was the plaintiff who initiated proceedings against her husband but she has failed to adduce relevant evidence in support of the claim of judicial separation. It is trite law that for the plaintiff to succeed in this regard, she/he has to prove that there was misconduct or cruelty or that the defendant has made life together with him dangerous or intolerable for her. In the instant case, the plaintiff refused to move into the defendant's parental home from their rented flat when the defendant could no longer afford to pay rental same due to financial constraints. Instead she moved to place at Ha Mabote; and separated with their children.
- [49] This evidence remains unchallenged. It is therefore clear that the plaintiff did not initially desert the defendant for the reason that the defendant had made her life intolerable or dangerous. She could not and or she did not want to stay together with the defendant's mother. This explains and or confirms the defendant's evidence that the plaintiff was unruly and disrespected him. That is buttressed by unchallenged evidence that she drew cheques of vast sums of money for Mr. Thana Moseme without having consulted the defendant.
- [50] Her evidence that the defendant left her and their children behind at the flat they had rented is an afterthought and is not supported by evidence. Plaintiff

has not adduced evidence against the defendant has rendered her life with him intolerable in any way and or that the conduct of the defendant complained of was consistent with an intention to put an end to cohabitation as husband and wife.

[51] She has not denied that indeed the defendant was no longer able to pay the rental for the flat he had rented for his family nor has she challenged the contents of the letter of the landlord by which he had informed defendant to vacate the said flats due to non payment of rental by her husband. The plaintiff just deserted the defendant once when defendant had financial problems. Not only that, she also took away from the defendant, their minor children who she left in the care of her mother in the premises about which the defendant and their children.

[52] The plaintiff has also made a bare denial about her alleged adulterous relationship with Thana Moseme and has also failed to challenge the defendant's evidence that whilst they were still staying together, the plaintiff had falsely represented to him that Moseme was his brother. Also unchallenged is defendant's evidence that the plaintiff used to be in constant telephonic discussion with Moseme and that this used to cause problems between them, and also that she used to travel in Moseme's car as she did when she went to attend the funeral of defendant's uncle in Qacha's Nek.

[53] The plaintiff was also not at all pleaded to the issue that at the time when she and defendant, first encountered marital as well as financial problems, she was in fact a student at one of the local university and that her tuition fee and other related costs were paid for by the defendant.

- [54] This is an important issue to which the plaintiff should pleaded in the light of what the defendant explained in his evidence and in his answering affidavit as to why he had decided to move back to his maternal home and out of rented flat at Ha Thetsane. Refer to his answering affidavit.
- [55] The plaintiff's failure to disclose the above facts to court, as well as her failure to plead to the said issues is fatal to her case.
- [56] The plaintiff has joined issue with the defendant that she refused and remained at Ha Thetsane, where it has since been revealed that they had rented a flat, while the defendant moved out of that flat for reasons alluded to in his answering affidavit and in his evidence before court; namely due to financial constraints. She has however, not disclosed to this court; namely due to financial constraints. She has however, not disclosed to this court that he defendant actually moved back to his parental house at Hill's view. She only say, the defendant took household contents from same and moved out. She neither confirms nor denies that the defendant moved to his parental house at Hill's view. Refer to her plea to the counter claim.
- [57] In fact, her evidence that she did not move out of that rented flat but remained behind and later went to reside at Ha Mabote without her husband's content and or authority corroborates the defendant's evidence about her behaviour towards him in his viva voce evidence and in his answering affidavit.
- [58] The fact that the plaintiff's tuition fees are paid for by the NMDS is not supported by any kind of evidence and her averments are mutually

destructive, because she denies that the defendant pays her tuition fees, but then immediately says he failed and or neglected to make timely fee payments; while she had said same were paid by the NMDS from inception.

[59] Obviously, it is clear that the plaintiff is not being candid with this court. She is also contradicting herself on important issues which have a direct bearing on salient features of her case. As has already been alluded to above, she has also not disclosed to this court the facts that she does not reside with her children at the rented place at Ha Mabote. She also withheld from this court the facts that she had been accessing their joint bank accounts without the consent and authority of the defendant engaging in business and paying certain monies to the person with whom she allegedly has an adulterous relationship; and that at other times she went to attend the funeral of their uncle in Qacha's Nek using Moseme car and that the defendant did not know about this and had not given his permission for her to do so.

[60] The plaintiff has not prayed this court to condone her alleged adulterous relationship with Mr. Thana Moseme. This is probably because she is denying same although she has not denied or challenged evidence that she has had a relationship with him; which relationship existed long before she and defendant allegedly deserted each other.

[61] The plaintiff, who initiated the proceedings of judicial separation *a mensa et thoro*, has relied on the grounds of the alleged defendant's adultery for her claim. She has nowhere pleaded malicious desertion on the part of the

defendant, nor has she alleged that because of the defendant's behaviour, cohabitation between the parties has become dangerous and intolerable.

[62] Judicial separation has been described as being a decree of a competent court suspending the marriage between husband and wife, separating them from bed, board and cohabitation.

[63] There is a plethora of authorities to the effect that malicious desertion is a sufficient cause for judicial separation, as well as adultery. The decision that adultery is one of the grounds for judicial separation, as well as a ground for divorce; cannot be faulted.

[64] In the instant case, each of the spouses allege that the other has committed unlawful conduct and each of such conduct on their part carries in itself the implication that further cohabitation has become intolerable and that indeed the uninterrupted that cohabitation in the full sense has ended.

[65] The plaintiff has opted to ask for the smaller remedy of judicial separation; while the defendant has opted to ask for a larger remedy of divorce in his counter claim.

[66] These issues were extensively dealt with by court in the case of **Johnson v. Johnson 1971 A.D. 292**, in which, at page 300, Solomon J.A. said (I quote)

“For inasmuch as by our law malicious desertion is a ground for divorce. It would seem to follow as a matter of course that it must also be a sufficient cause for judicial separation. For the larger remedy of

divorce includes separation a mensa et thoro, and if the judicial party is satisfied to ask for the smaller remedy it is difficult to see on what ground it could possibly be refused”.

[67] In the premises and regard being had to the above, the issue whether the plaintiff has or has not proved misconduct nor cruelty meted out to her by the defendant is irrelevant because the ground she relies on in support of her remedy is also a ground for divorce. The defendant has filed a counter claim for divorce on the grounds of the plaintiff’s adultery, and indeed from his evidence, he has also disclose and proved that the plaintiff deserted him; and went to reside at Ha Mabote at a rented house. This, the plaintiff did at the time when the defendant could not afford to pay rental for the flat which they had initially rented. According to the defendant, he had financial constraints and so he was evicted from the said flat. That was when the plaintiff deserted her and desertion on her part continues to date. The plaintiff did not restore conjugal rights to the defendant, hence why they are still living apart.

[68] For the foregoing reasons, the defendant is granted a final decree of divorce on the grounds of adultery and malicious desertion by the plaintiff.

[69] I now deal with the parties’ matrimonial property. The plaintiff has stated that they own expensive property situated at Maseru and Qacha’s Nek without elaborating further. She has however listed in her written submissions a list of what she alleges forms their joint estate. Much of this is disputed by the defendant who has among other testified that most of the property listed therein as their joint estate is in fact his late father’s property which is subject matter in a case involving his late father’s will and that the

executors of the estate of his late father have not complete execution of this estate.

[70] Ultimately, it is clear that, in fact, the parties' joint estate comprises of an Isuzu Van of registration number H0300; some sites situated at Sekamameng, Ha Thetsane, and an unfinished house situated at Hill's View although the ownership of this site is contested in court and the case has not yet been finalized.

[71] This Court cannot therefore make any order for the parties' joint estate in relation to the disputed site as well as in respect of the motor vehicle, Audi Q7 of registration numbers H2164 which was bought by hire purchase and so in still the property of the bank until when it has been fully paid for. The rest of the other property listed by the plaintiff in her written submissions forms part of the estate of the defendant's father as alluded to above. This property does therefore not form part of the parties' joint estate.

[72] The issue of the custody of the parties' minor children has not been vigorously dealt with in evidence by either party. However, each of the parties' herein has prayed that he/she be awarded custody of their minor children with reasonable access to them by either party.

[73] Be that as it may, it has since become clear that the plaintiff has not and is not staying or residing with her minor children ever since she deserted their father around the year 2011. She has, from inception after her alleged desertion of the defendant, left her said children at Maseru East with her

own mother. The said premises are the property of the Maseru High School where her mother is or was employed.

[74] The above is a matter of common cause even though the plaintiff has repeatedly in her submissions said that she and her children stay at Maseru East at her maiden house. She conceded in her evidence in chief as under cross examination that she does not reside with her children at Ha Mabote, but that she said children reside with her own mother at her mother's residence with her mother's employer's premises at Maseru East.

[75] The defendant has confirmed the above and he went further to tell this court that the environment thereat Maseru East is not conducive to his children's because of its small size and that his children are not happy about their stay there. The defendant testified that he has been paying for the entertainment of his children and that he has taken them over out of Lesotho for such purposes. The plaintiff could neither admit nor challenge this evidence because she does not reside with their said children at Maseru East. She however conceded that the defendant is in the habit of communicating with the said children telephonically.

[76] In brief, the plaintiff has failed to substantiate her claims for the exorbitant sums of money which she claims for herself and on behalf of their children. There is nothing in her evidence suggesting that she has ever contributed anything towards the maintenance of her own children.

[77] The next issue to be dealt with, is the custody of the parties' minor children. It is trite that the paramount consideration is the interests of the child.

However, each case has its unique circumstances upon which it has to be treated. Of course, the court has a discretion, which it must exercise judicially, as to where to place the children. That discretion should be exercised with due regard to the true interests of the children. This the court will do if it is clear to it that in its opinion, and regard being had to all the surrounding circumstances, the balance of probabilities favours party A father than B as a custodiam parent.

[78] In the instant case, it is not in dispute that the plaintiff has never stayed together with their minor children since or around October or November 2011. She has not told this Court any specific, justifiable reasons why she did not reside with them at the newly acquired premises; neither has she disclosed to court whether she did seek the defendant's consent and or authority that their children should reside with her maternal mother. The defendant is on record as having testified that he had not given consent to plaintiff to remove their children to the plaintiff's maternal mother's premises alluded to above.

[79] In brief, he testified that that two bedroomed house with no running hot water in unsafe due to the fact that it is crammed with property, and although he pays for the children's cartoon T.V. Channel; they are not allowed to watch same. Well the list of his complaints and the inadequacies of the said premises is long. Suffice it to say that he has, in his testimony indicated in which respects he is not convinced that the said premises are not conducive for his children.

[80] In conclusion, the defendant has on a balance of probabilities, demonstrated to this Court in a convincing manner, that contrary to what the plaintiff wants this Court to believe, it is him who has always been maintaining his children even after the plaintiff had removed them from him. He did not only cater for the bare necessities of life but has provided them with groceries monthly as well as providing daily transport to and from school. He also covered all their medical, entertainment, clothing needs, as well as educational needs as he is paying for their educational policies with Metropolitan Lesotho.

[81] On the other hand, plaintiff has not made even the slightest attempt to tell this court in which way she has, even on a minimal basis, any kind of maintenance and support in respect of her children. That explains why she could not justify or explain the basis for her claims of maintenance and that of her children.

[82] For the foregoing reasons, and regard being had to the fact and the surrounding circumstances, the plaintiff's request of maintenance in the sum of money herein indicated and requested is refused. The plaintiff is at large to approach this Court again should circumstances change.

[83] On the issue of custody, it is the considered view of this Court that custody of the parties' minor children, now aged 10 and 9 years, and regard being had to the unchallenged defendant's evidence be and is hereby awarded to the defendant with reasonable access to the plaintiff. Parties are at large to work and agree on the modalities of that access. Their agreement in this regard will then be made an order of court.

[84] The order of court in respect of the division of their joint estate is as follows:

- Plaintiff is awarded the parties' Isuzu motor vehicle of registration numbers H0300.
- She is also awarded their undeveloped site situated at Sekamaneng.
- Defendant is consequently ordered to hand to the plaintiff all the necessary and or appropriate documentation with regard to the above named properties so that the plaintiff can have same registered in her names.
- Further on, the defendant is ordered to assist the plaintiff to effect the necessary transfers and or ownership and title of same into her names.

[89] Each party is to bare costs of this litigation

M. Mahase

Judge

For Plaintiff: Adv. V.V.M. Kotelo K.C
(Assisted by Adv. T. Rantlo)

For Defendant: Adv. Kao-Theoha