

IN THE HIGH COURT OF LESOTHO

CIV/T/435/2008

In the Matter Between:

‘MATSEOLE MAKHETHA

And

NAPO MAKHETHA

JUDGMENT

Coram : Hon. Madam Chief Justice N. Majara

Date of hearing : 11th September 2012 – 8th June 2016

Date of judgment : 9th February 2017

Summary

Action for divorce – matter initially contested but defendant failing to testify after plaintiff gave her evidence – divorce granted – ancillary prayers by and large agreed – issues narrowed down to that maintenance only.

[1] This matter first appeared on the roll as a contested divorce sometime during the year 2008. Perusal of the minute of the 7th December 2009 in the court’s file reveals that the parties agreed to a custody order in terms of which

the plaintiff was awarded custody of the minor children with reasonable access to the defendant *pendete lite*. After several postponements, the matter was enrolled before me for hearing on the 11th September 2012.

[2] On the stated date, the plaintiff took the stand and gave her testimony in support of her action for divorce against the defendant to whom she got married by civil rites in 1996. After her evidence, the plaintiff was cross-examined by the defendant's Counsel. However, after the plaintiff's evidence the defendant seems to have lost interest in continuing with defending the action. This is because on the subsequent dates that the case was enrolled for continuation, the defendant did not make an appearance and the Court was informed by his counsel that he could not locate him despite several attempts.

[3] This situation went on for some time until the 10th April 2014, when **Mr. Molise** who had hitherto been representing the defendant informed the Court that the defendant had indeed indicated that he no longer wished to defend the matter and it was once again postponed by consent with Counsel for the plaintiff to the 15th April 2014 on which date I granted the plaintiff a decree of divorce on the grounds of the defendant's adultery as was established by her testimony which was never gainsaid. I then postponed the matter to the 9th March 2016 and again to the 11th May 2016 for hearing on the ancillary prayers, namely custody of the minor children, maintenance, forfeiture of the benefits of the marriage and division of the joint estate.

[4] On the 11th May 2016 the plaintiff took the stand again and gave her testimony in support of the ancillary prayers. For the sake of brevity I will not give a summary of her evidence as it suffices for me to mention that once again after being cross-examined by Counsel for the defendant, the latter elected to remain silent. However, I find it apposite to mention that when the Court reconvened for the closing arguments, it transpired at the end of the respective

submissions that the parties were agreeable in connection with the prayers for custody of the minor children and forfeiture of benefits of the marriage. There was also an indication that the parties were willing to settle the issue of the joint estate.

[5] In order to confirm this, the Court subsequently called the parties' legal representative in chambers and after a few enquiries they both agreed that rather than the joint estate being left to be administered by the Master of the High Court which would be costly, they would rather agree that the house, the property of the joint be awarded to the plaintiff, and the only vehicle remaining of the three that were acquired during the subsistence of the marriage be awarded to the defendant.

[6] I also find it worthy to mention that initially, the plaintiff had sought for the division of the other two vehicles which per her unchallenged evidence, the defendant had since disposed of by transferring them to other people. However, after the Court made an enquiry into the matter her counsel **Mr. Rasekoai** indicated that they were amenable to the suggestion that if the defendant offered that the plaintiff be awarded the house, the issue about the other two vehicles which he had since disposed of should be and was abandoned.

[7] This effectively meant that I was left to deal with only one issue, i.e. maintenance of the minor children. In this connection the plaintiff had testified that sometime in 2008, she launched an application for maintenance pending litigation in the Berea Magistrate Court as a result of which the defendant was ordered to pay the sum of M800.00 per month for maintenance of the two minor children. The plaintiff told the Court that the defendant has never defaulted in this connection.

[8] It was her further evidence that the said amount is insufficient for the reason that she has had to pay for food, clothing, accommodation, medical bills

and other incidentals as well as school fees for the parties' two minor children. Further that the elder of the two goes to a college in Welkom South Africa and her tuition fee amounts to M2, 600 per semester and M800.00 for transport per month. That food costs about M600.00 per month, clothing about M2000.00 per quarter whereas medical bills will only be paid if one of the minor children falls ill. She added that on occasion, the defendant has bought clothes for the children.

[9] For the minor child, it was the plaintiff's evidence that his school fees cost M4, 000.00 per year, M200.00 per month for transport, and M1, 500.00 per quarter for clothing. She added that in all this, the defendant has only helped her in respect of their elder child only.

[10] I have already shown that although the plaintiff was cross-examined on her testimony, the defendant did not favour the Court with his version which basically means, the evidence of the plaintiff has not been gainsaid.

[11] But be that as it may, the Court still has the duty to make a proper assessment of the minor children's needs vis-a-vis, the parties' respective sources of income in order to make an order that will answer those needs without it being impossible for the defendant to comply with.

[12] Upon request by the Court, the plaintiff submitted her monthly pay slip showing how much she earns per month which can be rounded off to M5000.00 per month. We have been told that the defendant makes about M5000.00 from his taxi takings out of which he has to pay his assistant, buy petrol and maintain the taxi.

[13] It is trite that both parents have the legal duty to maintain their minor children until they attain majority or otherwise become emancipated. I have thus taken into account the total cost of the children's needs and broken them down to monthly amounts which have come to about M1700.00 per month.

[14] In all fairness to the plaintiff, I am cognizant that she has been solely burdened with the maintenance of the minor children since they fell out with the defendant. It is also a fact that some of the needs such as medical bills, buying groceries mid-month etc, cannot be accounted for with precision. I have thus come to the decision that when all these factors are considered collectively, the amount of M1300.00 per month for both children would meet the justice of this case.

[15] In the result, I make the following order;

(1) Judgment is herein entered in favour of the plaintiff as follows;

(a) Plaintiff is awarded custody of the parties' minor children with reasonable access to the defendant.

(b) The defendant is ordered to pay maintenance for the parties' minor children at the rate of M1, 300.00 per month.

(c) There is no order as to costs.

N. MAJARA
CHIEF JUSTICE

For the Plaintiff : Adv. M. Rasekoai

For the Defendant : Adv. L. A. Molati