

IN THE HIGH COURT OF LESOTHO

Held at Maseru

CIV/T/492/09

In the matter between:

LIPUO RAMOTSOARI (nee Nkhabu)

PLAINTIFF

And

TELEKO RAMOTSOARI

DEFENDANT

JUDGMENT

Neutral citation: Lipuo Ramotsoari v Teleko Ramotsoari (CIV/T/492/2009)
[2021] LSHC 117

CORAM : JUSTICE SN. PEETE (Retired)

HEARD : 17 February 2020

DELIVERED: 27th October 2021

Summary

Marriage – Divorce – Adultery – Decree of divorce granted – Matrimonial property – Guilty spouse – Discretion of court – Interests to be considered – Irreconcilability of parties in the divorce proceedings.

Where a divorce has been granted to a wife on grounds of adultery, the disposition of matrimonial property where forfeiture of benefits has been sought in the summons, the court in its discretion can make an order thereof as interests require, especially of children and decree of blameworthiness.

Sanctity of marriage is antithetical to adulterous behavior by the spouse.

PEETE J (Retired):

INTRODUCTION

- [1] In 23 years on the Bench of the High Court, this case is one of the saddest I have had duty to preside over. It is a divorce case between a couple of high profile. Defendant was at one time or another a Principal Secretary in the public service.
- [2] On the 29th September 2009 Plaintiff (the wife) filed summons against the defendant principally upon defendant's blatant adultery with one "Neria Hlothoane" a local woman in Maseru. This adultery continued unabated even after the filing of divorce summons. They continue to live under the same roof. She claimed in the summons (a) a decree of divorce on the basis of defendant's adultery; (b) forfeiture of the marital benefits; (c) contribution to plaintiff's legal costs in the amount of M 9500.
- [3] It is not necessary in this judgment, to recount the said trial for divorce

(hotly contested by defendant). Divorce decree was granted on the 19th June 2014 despite the court (hoping for a reconciliation granted *mero motu* on the 16th August 2016. After many set downs during which this court in chambers exhorted the parties to reconcile and despite the praise worthy attempts by **Counsel Mokaloba** and **Advocate Letsika (Mei & Mei Attorneys)**, all attempts hit the wall. Defendant's plea nevertheless was a complete denial of adultery with Neria Hlothoane.

- [4] That was a quandary that prompted the court to grant a decree of divorce on the 16th June 2014. One judge in another jurisdiction once lamented “*a marriage is like an egg and once shattered cannot be rebuild again and like love which once is lost and gone, it will not return.*”
- [5] In this sad scenario after the granting of decree of divorce, the COVID 19 pandemic struck Lesotho in February 2020; and all court business ground to a complete halt – resulting in this matter remaining subjudice re: estate of the marriage especially a beautiful matrimonial house situated at Khubetsoana.
- [6] Counsel and myself were informed that despite the divorce decree, the plaintiff and defendant continue to live within how? The court cannot speculate. Mr Letsika for Mei & Mei Attorneys and Mr Mokaloba really made gallant efforts to reconcile parties from the very beginning. Their gallantry hit the wall and parties are still poles apart today. The hard law must take its course regarding the property of the marriage.

[7] The parties had been married in community of property; the matrimonial common law must apply since an amicable settlement was ruled out of question. The court however the following:

- (a) how and by whom was the matrimonial home built,
- (b) the blameworthiness in the divorce,
- (c) interests of children and Ramotsoari family,
- (d) sale of the house and equitable distribution of proceeds.
- (e) whether a family trust (without any sale the house and the rental proceeds) being shared pro rata while the house remains property of the family.
- (f) counselling the parties – yet again – to act responsibly in the interests of their children and their offspring before a final judgment.

Order: Prayer (b) and (c) granted as prayed for in the summons.

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JUSTICE SN PEETE
(RETIRED JUDGE)

For plaintiff: Mei & Mei Attorneys
For Defendant: Mr Mokaloba