

HLABANGOMA SANIDA  
versus  
ALICE HLABANGOMA (NEE MUNETSI)

HIGH COURT OF ZIMBABWE  
CHAREWA J  
MUTARE, 10 & 17 March 2022

### **MATRIMONIAL TRIAL**

*Ms E. N Ngorima*, for the plaintiff  
*Defendant*, in person

CHAREWA J: On 20 March 2020, plaintiff issued summons against the defendant claiming an order for divorce and ancillary relief. The defendant filed an appearance to defend and plea and the matter proceeded to pre-trial. At the pre-trial hearing, it was clear that the marriage relationship had irretrievably broken down and there was no prospect of its restoration. There was no dispute as to the custody of the minor child of the marriage. The plaintiff conceded to all the defendant's demands regarding matrimonial property. The only two sticking issues were maintenance and access in respect to the child. These were referred to trial.

#### Divorce, custody and proprietary rights

[1] At the commencement of the trial, the parties reiterated that matters of divorce, custody and proprietary rights are not in dispute and may be resolved by the court in terms of the defendant's plea.

#### Maintenance

[2] On maintenance, plaintiff initially offered \$300 per month, which he conceded was inadequate and revised to \$1 500 per month. By the time the matter came to trial, the plaintiff had further realised that that amount was not enough and offered USD50 per month. On her part, the defendant demanded USD100 per month as maintenance Access

[3] Regarding access, plaintiff sought access rights for two weeks of each school holiday while defendant was opposed to plaintiff having any access to the child at all.

### PLAINTIFF'S CASE

a) Maintenance

[4] In his testimony, plaintiff averred that while USD50 was not enough to meet the minor child's school expenses, clothing, medical and groceries, it was all he could afford. He stated that he was not formally employed, having been retrenched by Damofalls Investments (Pvt) Ltd. The retrenchment letter was entered into the record, by consent, as Exhibit 1. He professed to survive on buying and selling second hand clothes, making \$100-150USD, hence the offer of USD50. Defendant unhelpfully then retorted, in cross-examination, that plaintiff should keep his \$50 to himself and stated that she had no further questions.

[5] The court noted that the retrenchment letter did not specify the amount of the package and enquired from the plaintiff thereon. He stated that his package was supposed to be USD5 887. However, Damofalls Investment (Pvt) Ltd professed to have no money to pay it and allocated a stand measuring 612 square metres and valued at USD32 000 among 6 employees for them to sell and share the proceeds. The stand is yet to be sold. However, in the event of its disposal and plaintiff receiving his share, he offered to allocate USD2 000 towards the upkeep of the minor child.

b) Access

[6] Regarding access to the minor child, plaintiff stated that he would want to have his child for the first two weeks of each school holiday. However, in the event that defendant remained obdurate he was prepared to scale it down to one week. He stated that he lives in a three bedroomed house with his 21 year old son, and the minor child would have her own bedroom when she stayed with him. He also stated that for the two weeks he would have the child, he would not go out to buy and sell second hand clothes so that he can give full attention to caring for his daughter. He averred that he was well able to care for her as from January to March 2020, he had sole custody of the child when defendant abandoned the family home and went to Goromonzi. It was his testimony that he loves his children, has no history of abusing them and has a good relationship with them. It was only defendant who sought to "fix" him for seeking a divorce by denying him access to the minor child since the parties' separation.

[7] Defendant declined to cross-examine the plaintiff on this issue.

## DEFENCE CASE

[8] The defendant gave evidence on her own behalf. Her testimony was quite unhelpful even with the assistance of the court to which plaintiff's counsel consented.

### a) Maintenance

[9] She asserted that she needed USD100 for the maintenance of the child. She averred that she had not worked out the monthly requirements for the child and that the figure of USD100 is simply what she wanted, or else the plaintiff should not pay any maintenance at all. She did state that school fees per term were RTGS2050. However, she stated that she did not know how much she expends per month on medication, 9clothes or foodstuffs.

[10] Under cross examination, she initially professed that she was unemployed and that she stays with and is spoon-fed by her parents. However, she later recanted and stated that she works one day a week and earns USD20 per month which she spends wholly on the child at USD5 per day. The mathematics obviously does not work for if she spends USD5 per day on the child it means her monthly income is at least USD150! She did concede that she has an equal responsibility to maintain her child. She could not deny that on an income of a maximum of USD150 per month, monthly maintenance of USD50 was reasonable given that she could not justify a claim for USD100 per month. However, she was adamant that regardless of plaintiff's financial situation, only USD100 would make her happy.

### b) Access

[11] On access she stated that she would leave that to the court to decide. Under cross examination she re-affirmed that the court should decide, but was adamant that her own position was that plaintiff should not be granted access to a girl child even though she acknowledged that plaintiff had not ever abused the child. She confirmed plaintiff's averments that he had stayed with the child for three months and nothing amiss happened to her. She claimed not to know whether plaintiff had love for his child.

## ANALYSIS

[12] The defendant struck the court as unnecessarily obdurate perhaps out of bitterness at the failure of her marriage. No cogent reasons were advanced by her to deny plaintiff access to his child, and deprive such minor of the opportunity to bond with her father and paternal relatives. Clearly, it is in the best interests of the child to have parental love from both

parents. In the circumstances, access for two weeks of every school term is not unreasonable for plaintiff to ask and is a reasonable period to allow the child to bond with her father.

[13] As for maintenance, there must always be a balance struck in maintenance orders between the needs of the child and what a parent can reasonably afford. That is why it is necessary for the custodian parent to provide a detailed list of the child's requirements and the estimated cost thereof. Unfortunately, in this case, defendant was not helpful. Neither was she candid with the court regarding her own income so that she bears her share of the child's support.

[14] On his part plaintiff produced proof of his employment state and divulged his income and its source. The concession by defendant that an offer of USD50 was reasonable in those circumstances was quite proper in my view. Further, the court notes the offer by the plaintiff to allocate USD2000 from his retrenchment package towards support of his child.

[15] All other matters not being contested, the court therefore makes the following order:

### **Disposition**

Accordingly, it be and is hereby ordered that

1. A decree of divorce be and is hereby granted.
2. Custody of the minor child Abigail Hlabangoma, born the 3<sup>rd</sup> January 2012 is awarded to the defendant.
3. The plaintiff shall pay USD50 or its equivalent on the date of payment every month towards the maintenance of the minor child Abigail Hlabangoma.
4. The plaintiff shall pay, from his retrenchment package, USD2000 or its equivalent on the date of payment, towards child support.
5. The plaintiff shall exercise access rights to the minor child Abigail Hlabangoma during the first two weeks of each school holiday.
6. The plaintiff is awarded the following matrimonial property for his sole and exclusive use:
  - a. 80% of the communal homestead at Zhombe Village
  - b. 1 x double bed at Zhombe village
  - c. Kitchen unit
  - d. 1x herd of cattle
  - e. 2x goats

7. The Defendant is awarded the following matrimonial property for her sole and exclusive use:
  - a. 20% of the value of the communal homestead at Zhombe village. The plaintiff shall cause the valuation of the immovable property and pay to the defendant the assessed value of her 20% share net of her pro-rata share of the valuation costs within 12 months from the date of this order.
  - b. 1 x double bed in Mutare
  - c. Wardrobe
  - d. Kitchen chairs
  - e. Pushing tray
  - f. Kitchen utensils
  - g. 4 plate stove
  - h. Refrigerator
  - i. Home power station
  - j. Solar panel
  - k. Television set
  - l. Radio
  - m. Room divider
  - n. 2 x herd of cattle
  - o. 2 x goats.
8. There is no order as to cost.

*Legal Aid Directorate, plaintiff's legal practitioners*