

**MARSHAL JOSEPH STUART**

**Versus**

**PIATANJA WOOLF**

IN THE HIGH COURT OF ZIMBABWE  
MATHONSI & MAKONESE JJ  
BULAWAYO 22 FEBRUARY & 3 MARCH 2016

**Civil Appeal**

*Ms V. Chikomo* for the appellant  
No appearance for the respondent

**MAKONESE J:** This is an unusual case. The nature of the appellant's claims are unusual. The ancient art of voodoo originated as a shamanistic tradition emerging from the dark world. The appellant sought damages for contumelia, pain and suffering and loss of amenities of life caused by the respondent who cast love spells and used love portions on him to influence his emotions towards her. The appellant argued in the court a quo that the conduct of the respondent was wrongful and unlawful and caused him extreme psychological and emotional harm. The appellant also claimed from the defendant payment of \$850 being monies lent and advanced to the respondent between January 2012 and December 2012. Appellant further claimed payment in the sum of US\$240 being the value of clothing items taken by respondent on the pretext of advertising them on appellant's behalf. Appellant further claimed payment of US\$2 640 in respect of monies allegedly paid to cure the love spell cast upon him by the respondent. The court a quo dismissed the appellant's claims on the grounds that there was no evidence to establish that the appellant had suffered loss as a result of the love spells, charms and concoctions. The court failed to quantify the losses allegedly suffered by the appellant in consulting prophets, "sangomas" and traditional healers for the curative treatment he said he received.

At the hearing of this appeal, although the respondent was in default, we invited Miss *Chikomo* appearing for the appellant to address the court on the merits as we felt the issues raised in this appeal are of some legal significance. Miss *Chikomo* did concede at the outset that the

use of a “love spells” and “charms” is steeped in realms of the dark world. She however contended that the appellant’s claims were sufficiently established and that respondent committed a wrongful act against the appellant by using charms and love potions to influence his emotions for her and that he was entitled to damages.

## **Background**

The appellant met the respondent sometime in 2007. On several different occasions defendant would visit appellant’s flat which was located upstairs at his shop. On a certain day the respondent arrived at the appellant’s shop. She walked behind the counter and pulled off her dress and pant and the parties had sexual intercourse. From that day the appellant and respondent continued to see each other and on occasions the respondent would sleep over at the appellant’s flat. One Saturday evening the respondent came over to the appellant’s flat around midnight. She was holding a bottle with frozen “whitish” water and a brownish packet. The “love birds” went to bed and the following morning the respondent remained sleeping whilst the appellant went to open his shop. Around 9am respondent invited the appellant to come and have breakfast which she had prepared. At lunch hour the respondent prepared lunch for appellant. The respondent prepared supper as well. Immediately after supper the respondent requested to be taken home. Appellant stated that from that day his life changed dramatically. He would have visions of the respondent all the time. He could not sleep. If he saw a motor vehicle drive past he would chase after the car only to realize that respondent was not in the vehicle. If appellant tried to sleep with any other woman he would not have an erection. In some instances if he tried to be intimate with any other woman he would call out the respondent’s name. Appellant said he had panic attacks and was generally unsettled in his life. As a consequence, appellant consulted several prophets, “sangomas” and traditional healers. He was made to run through bushes naked. He consulted traditional healers who made him jump off trees. He was taken to Hillside Dams where he was made to jump off kopjes. He was made to walk naked on his knees like an animal. He was told by these healers that they would cure the spell which had been cast upon him by respondent. Appellant travelled to South Africa where he was made to perform several rituals. Nothing changed. He was taken to Mzilikazi where a man took him to a

bush and women and men stripped naked as they performed certain rituals. A big fire was lit and he was made to jump over the fire. This did not assist. He was referred to Trenance where he met a woman who gave him chicken feet to boil and eat but still this did not help. On one other occasion he was given a concoction to drink. He had a running stomach for a continuous period of four days. In December 2013 appellant was taken to a man at Solusi who made cuts on his head before rubbing some substances. The problem still persisted until appellant met the respondent's sister who informed him that the "love spell" had been cast upon him by a certain Matsaure. Appellant tracked Matsaure down and when he located him he told him about the love spell. Matsaure prayed for him and gave him some substance to drink. Appellant's problems were resolved on that occasion.

Appellant did call Matsaure to testify on his behalf. His version was that the respondent had indeed visited him and told him that she was having problems with her boyfriend. He instructed respondent to write her name and the name of her boyfriend on a piece of paper. He had burnt the piece of paper upon which the names were written. He prayed for the ashes and instructed respondent to mix the ashes in water and then add the mixture to body lotion. Respondent was advised that some of the water containing this concoction was to be used in cooking and bathing. She was told to return after four days. Matsaure described himself as a pastor who assisted people with various problems. He stated that the treatment he administered was designed to "strengthen" the love between the appellant and the respondent. He further confirmed that he gave the appellant water that had been prayed for in order to cleanse and force him to vomit. He charged appellant US\$250 for his services.

These are the background facts upon which the claim is based. The appellant led evidence from a long time friend John Sauramba who testified that appellant would indeed chase after cars. He believed this was a result of the love spells and charms used by the respondent. He accompanied the appellant to various places seeking help from traditional healers. The appellant led evidence from Siphawe Mudumo to confirm that respondent borrowed money from the appellant.

**Respondent's version**

In her defence, the respondent testified that she did not owe the appellant anything because she was in a love relationship with him. She told the court that appellant had abused her psychologically. She disputed the fact that she had used love potions and charms. She conceded that she visited a prophet in a bid to strengthen her relationship with the appellant. She asserted that the appellant did not know the difference between falling in love and casting a love spell. Respondent confirmed that she borrowed money from the appellant and signed for it. She said she signed for a total of US\$350. She was prepared to refund between US\$120 to US\$150 and not more than that. The respondent called one witness, Garreth Woolf in support of her defence case. This witness testified that appellant and respondent were in a relationship. He confirmed that the respondent was given certain clothing items by the applicant on various occasions.

**Whether the appellant suffered damaged for pain and suffering arising from a love spell**

The main issue for determination in this appeal is whether the court a quo erred in holding that the appellant had failed to prove his entitlement to damages arising out of the alleged love spell cast upon him. The appellant has contended that the respondent's actions, that is, her administering of lotion with burnt ash residue of paper, with written names of the parties on it and pouring water into appellant's food and bathing water without the appellant's consent amounts to an actionable delict. The appellant contends further that this conduct typifies some form of sorcery meant to influence appellant's emotions of love towards the respondent. There can be no doubt that there is no scientific proof that the administration of the alleged love spell and charms did cause the appellant to behave in a certain manner. In any event, if the charms or love potions were administered as described there is no absolute certainty that there can be no other explanation for the appellant's behaviour. There is no measure of the effect of a love spell or charm. In a single word, it boils down to a belief system. The person who administered the alleged love spell stated that he prayed over the piece of paper and burnt ash residue. He believed that this would "strengthen" the love of the parties. The desired effect was not to cause

harm towards either the appellant or the respondent. The distinction between love and obsession can sometimes be blurred. The Merriam-Webster Dictionary defines obsession as follows:

*“a state in which someone thinks about someone or something constantly or frequently especially in a way that is not normal.”*

From the above definition the appellant was clearly obsessed with the respondent for a period of time. The degree of his obsession took various forms. He admittedly saw her several times at his shop and at his flat. It cannot be stated with any degree of certainty when the love blossomed to become an obsession. What is clear though is that the appellant believed that his conduct was caused by a love spell. This he says is supported by the fact that he would see the respondent in visions and would chase after cars. Appellant also attributed his erectile dysfunction to the love spell. Once again it is not possible to rule out any other causes for the appellant's erection problems.

In his response to the notice of appeal, the trial magistrate commented as follows:-

*“There was no sufficient evidence which the court could rely on to support the claim that a love spell had been cast upon the plaintiff. All the plaintiff's witnesses failed to show that the defendant used a love potion on the plaintiff. The prophet's testimony only serves to prove that the defendant sought divine intervention, it does not prove the casting of a love spell. The fact that the defendant sought divine intervention in her troubles relationship cannot be mistaken to use of non-natural means. It was incumbent upon the plaintiff to satisfy the court that the defendant used a love potion on him and because of this he had been rendered useless...”*

In his book *A Guide to the Zimbabwean Law of Delict*, Professor G. Feltoe at page 25, discusses the actions in our law of delict, namely the *actio legis Aquilliae* and the *actio injuriarum*. Actions brought under the *actio injuriarum* involve damages claim. The requirements for a delictual claim are that there must be some conduct (i.e. an act or omission) which the law of delict recognizes as being wrongful or unlawful (the wrongfulness requirement). The conduct must have led either to physical harm or financial loss. There must be a causal link between the defendant's conduct and the loss (the causation requirement).

I observe that the appellant who has filed fairly detailed heads of argument has not been able to refer to any decided cases from this jurisdiction or from any other jurisdiction that would tend to support the assertion that the appellant established the existence of an actionable delict.

It is trite that for a claim based on delict to succeed there must be an actionable claim. There must be a cause of action upon which the claim is based. The cause of action must arise from a claim recognizable at law. The appellant was therefore required to establish a cause of action and prove that he suffered damages caused by the respondent's wrongful conduct.

In my view the appellant had to satisfy three requirements to sustain his claims:

1. The existence of a wrongful act
2. The conduct of the respondent caused physical harm or financial loss
3. The appellant suffered damages for contumelia, injuria, pain and suffering and loss of amenities of life as a result of the respondent's conduct.

I am not persuaded that the appellant proved his claims. What the appellant achieved was to narrate his relationship with the respondent to a point where he felt that he was under some kind of a spell. Whether his behaviour does not amount to mere obsession and nothing else remains an open question. Our law provides for remedies for recognizable delictual claims. It remains speculative to suggest that the respondent committed a wrongful act. I am not satisfied that the conduct of the respondent was proved to have caused physical or emotional harm to the appellant. As a consequence, the appellant would not be entitled to payment of damages. As regards the payment for monies lent and advanced to the respondent, the available evidence confirms that there was an exchange of money and gifts between two people in love. The learned magistrate came to the correct conclusion when he held that the appellant failed to satisfy the court that the money was loaned to the defendant.

In the result, the appeal is hereby dismissed.

Mathonsi J ..... I agree

*Majoko & Majoko* applicant's legal practitioners