

PLAXEDES TAONEYI (nee) CHIDEMBO  
versus  
ENERY MADZIMA

HIGH COURT OF ZIMBABWE  
**MUCHAWA J**  
HARARE; 25 June, 23 July, 14 August 2024 and 15 January 2025

**Civil Trial – Adultery Damages**

Ms *L Rufu*, for the plaintiff  
Mr *M Matutu*, for the defendant

MUCHAWA J: At the conclusion of the hearing of this matter on 14 August 2024, counsel for the plaintiff undertook to file written closing submissions by the 19<sup>th</sup> of August 2024 whilst defendant’s counsel would file by 23<sup>rd</sup> August 2024. Plaintiff’s closing submissions were duly filed but to date defendant’s submissions have not yet been filed. I am therefore proceeding to write this judgment without them as I could not wait forever. This is a matter in which the plaintiff is claiming adultery damages in the total amount of USD 30 000.00 against the defendant. These are broken down as USD 15 000.00 for *contumelia* and USD 15 000.00 for loss of comfort, society and services.

The agreed issue for determination is cast as follows: “Whether or not the defendant is or has been having an adulterous relationship with the plaintiff’s husband? If so whether or not plaintiff is entitled to any damages from the defendant, and the quantum of such damages.”

**The plaintiff’s case**

Two witnesses gave evidence in support of the plaintiff’s case. First to give evidence was the plaintiff herself. She stated that she is married to her husband, Kudakwashe Taoneyi in terms of what was then the Marriage Act, [*Chapter 5:11*]. Such marriage was solemnized in 2005. A copy of the marriage certificate was accepted as exhibit 4. Such marriage is still in subsistence.

The plaintiff avers that she first got to know of the defendant through her husband who related how the defendant had come as a client to their family business around February or March 2022. She had been particularly dramatic when the job done for her was not to her satisfaction and she caused commotion leading to plaintiff’s husband (henceforth Kudakwashe) negotiating with

her to calm her down as a form of damage control, The defendant is said to have taken that opportunity to confide in Kudakwashe about the sorry circumstances of her past marriage where her husband threw her out. She was fully armed with a newspaper cutting of a similar story. She shared too that as a female businesswoman some of her clients patronized her and she was eager to work with men like him who would protect her.

The plaintiff said that her husband thereafter proposed that she should enter into a joint-venture business with the defendant even though she is formally employed at Baines Avenue, in order to cushion self against economic uncertainty. Thereafter the defendant and Kudakwashe would converse on the phone, and she assumed it was purely business engagements.

The first physical meeting between the parties is said to have occurred in July 2022 when plaintiff's daughter was celebrating her birthday at church on a Sunday. She observed her husband go out of church to answer a phone call, yet he was Master of Ceremony in that service. After the phone call he advised the plaintiff that the defendant wanted to come with her child, Nattie, to celebrate the birthday. It was explained that at the end of the service the Master of Ceremony welcomes visitors, and the defendant stood up to be welcomed and introduced herself and as she had to say who had invited her, she said it was Mr and Mrs Taoneyi. After the service plaintiff says her husband introduced her to the defendant as his wife – "Mai Tatenda". They all fellowshiped with the pastors and the plaintiff says she invited the defendant to continue coming to church but she declined.

After the church service the Taoneyi family proceeded to town together with defendant's child to have lunch at Chinhoyi Hotplate. Plaintiff noticed that the defendant had followed them, and her explanation was that she had realized that her child did not have warm clothes, so she had bought a tracksuit for her. The relationship between them was going on so well that the defendant offered to accompany the plaintiff to where she had bought the tracksuit near Market Square. They went together and the plaintiff bought tracksuits too. After lunch the plaintiff's brother – in law offered to take the plaintiff and her husband to dinner in Borrowdale. Their maid Linda, nephew Rodney Chakadya and the children went home at that stage and the defendant is said to have offered to drop them off.

The second encounter with the defendant is said to have occurred in September 2022 when plaintiff and her husband were at church conducting prayer for leaders as elders at church. She saw her husband go out to answer a phone call and upon returning he asked that they be excused as a

friend had had an accident. She learnt the friend was the defendant and she had been followed by thieves when coming from work and she was hiding in a rescue room whilst the thieves were still outside. They then drove to Hatfield, and it was the plaintiff who insisted they get police involvement. Upon arrival plaintiff's husband parked near the gate and plaintiff drove the car away from the gate. Police details jumped over the wall and gunshots were fired. No thieves were found and when the intercom was rung and the defendant learnt of Kudakwashe's presence, she opened the gate. She was with her child and maid and her dress in a biker and string top did not show that she was coming from work. The police then gave her their number and questioned why she would call someone at church in Belvedere, yet they were close by. She was left in the company of the police as she said she was afraid. One of the striking things for the plaintiff was her husband's familiarity with the route to defendant's place and how the guards at the boom gate seemed to know him and waved at him. When she asked her husband, he said they bought a spraying machine which he delivered to defendant's house.

The plaintiff, who did not suspect anything, says she even sent a message to the defendant the following day checking on her and the child. The defendant is said to have apologized for calling plaintiff's husband.

The chats by cellphone are said to have continued after plaintiff's daughter was invited to defendant's daughter's birthday party together with photos sent.

The affair between Kudakwashe and the defendant was discovered in December 2022 when the plaintiff saw the status on defendant's WhatsApp with a ring she once saw in their car with her husband holding defendant's hand and captioned "Thank you my love for the best birthday gift ever." All this transpired on 27 December 2022 and Kudakwashe had uncharacteristically excused himself from going to the rural home with his family for Christmas. He was supposed to follow but did not and plaintiff came back on 28 December.

It was the plaintiff's testimony that when she confronted her husband, he admitted the affair to her, asked for forgiveness and asked for the plaintiff's support to get out of the affair. This was in December 2022.

In January 2023 the plaintiff and her husband noticed that the defendant was stalking them. In one instance when they were parked by the Labour Court the defendant is alleged to have come and taken keys from the ignition leaving plaintiff and her husband stranded. The threats and

stalking are said to have started when Kudakwashe called the defendant and told her he was ending the affair, and they needed to do this before a spiritual leader.

When the defendant took the car keys, she said Kudakwashe knew where to find her and plaintiff ended up asking her nephew Rodney to bring spare keys for the car. Her husband who had gone with the defendant did not come back. Even when the plaintiff's brother-in-law called her to release the keys and Kudakwashe she refused and said he was her soulmate. This incident resulted in the plaintiff's child being delayed in going to school by a day.

Another encounter was on 15 January when the defendant is said to have gone to plaintiff's home in the company of another woman. She is said to have banged the gate and entered after calling Kudakwashe and threatening that she was coming. She is alleged to have created a scene where she was shouting using vulgar words and boasting about having been given USD 1 000 at the time plaintiff was sent alone to the rural home over Christmas. She said too she had come then to the house and collected some chickens. To avoid the children being affected by the commotion, the plaintiff says she drove away as a mob was now gathering. She phoned the maid to lock gates. This incident is said to have been witnessed by Rodney and the mob.

Thereafter the plaintiff sought a peace order against the defendant as appears on pages 52 to 70 of the consolidated record. On page 70 is an order granted by consent.

Kudakwashe also filed an application for a peace order, but this was withdrawn.

On her part, the defendant reported an assault matter against the plaintiff claiming that plaintiff had assaulted her and broken her phone. The matter was before the Magistrates Court from February to June 2023. The plaintiff was found not guilty and acquitted on 13 June 2023. This was after attending court 10 or more times.

It was the plaintiff's evidence that the relationship between the defendant and her husband was still ongoing as her husband now comes home late and openly says since there is now a baby involved, they are going strong.

In justifying the damages claimed, the plaintiff said that she has now lost the love and comfort she used to get from her husband who is now totally emotionally divorced from her. He has been heard to say once this matter is over, he wants to sell everything and move on.

The plaintiff said she has suffered several diseases in these two years. Where they used to go out for holidays as a family, celebrate birthdays and anniversaries, she says this is no longer there. Her children are always asking her about the changes.

The plaintiff said that she has suffered public humiliation in church and in society in general as the defendant publicly revealed the affair and confronted their church apostle questioning why he was praying for a marriage which was already gone. As a result she says that they were demoted from church leadership.

Within the family, Kudakwashe is the eldest son and as their mother died early, they had taken care of 4 out of the 7 siblings. They were considered as mother and father. This status is said to have been affected with everybody distancing them. The plaintiff also said that her husband is psychologically and mentally affected and she sometimes feels pity for him. Because defendant put photos of Kudakwashe and herself in a compromising position on her husband's status, this is said to have damaged his good reputation at work.

On loss of consortium, the plaintiff said that she is no longer getting conjugal rights since the affair started. At first, she thought it was her husband's diabetic condition, but lately when he comes in after midnight, he brags about the number of rounds of sexual intercourse he has had with the defendant and that he is simply waiting to move out.

The defendant was described as not remorseful as she has continued with the affair and claims to have come into the picture to solve the problems in plaintiff's marriage. She is said to body shame the plaintiff and comparatively say she is well endowed with all the assets.

On the character of the defendant, she said that when she went to deliver the peace order the police officers who attended to her upon learning that she wanted to serve the defendant advised her that she should take better care of herself as her husband had been taken by a slay queen.

In detailing her health challenges, the plaintiff said that she has been bleeding for a whole year though she has not taken a test but has been attended to by a gynecologist.

Furthermore, she stated that her children are now suffering as her husband no longer maintains them at the same level as he now says he is now taking care of the little one whom he opened a company for, being the defendant's son.

The criminal matter against her which lasted for 6 months is said to have affected her as she would sometimes miss work. Under cross examination, legal questions were put to the plaintiff such as that the declaration did not specify that the defendant had knowledge of the existence of the marriage between plaintiff and Kudakwashe. Another legal question was whether the plaintiff could rely on evidence in the protection order filed after the adultery summons. She was further

quizzed on why the declaration does not include averments of having been demoted at church and how the defendant would be unable to respond to this.

To most of these questions, the plaintiff's response was that she does not know as she is not a legal expert.

In re-examination, the plaintiff confirmed that a claim for adultery damages involves knowledge of the existence of a monogamous marriage. The details on the loss of consortium and *contumelia* were said to be set out in the summary of evidence and fully outlined in the evidence given in court.

The plaintiff revealed too that the defendant had actually boasted that the pregnancy resulting in the birth of a child was not the first with Kudakwashe. She said that there were 2 prior miscarriages.

The second witness to give evidence for the plaintiff was Rodney Chakadya, her nephew. His evidence corroborated that of the plaintiff in relation to the defendant's initial attendance at church in July 2022 and the lunch in town and how defendant had dropped him and others off by a local service station. He also confirmed the defendant's alleged violent arrival at home on 15 January 2023 and how he was a witness in the assault matter against the plaintiff.

Though Rodney was quizzed, and it was put to him that he was in court to support his relative, the plaintiff, he denied this and said that he wanted to see was justice prevail.

### **Defendant's case**

The defendant was the only witness in her case. She testified that she runs a restaurant and Kudakwashe would come to eat there. He then got her number and started to propose love to her in 2022. She agreed and their relationship started. He even went to see her with his uncle one Gwekwerere and he was also introduced to her relatives. He then engaged her before a gathering of invited guests on 27 December 2022.

She says he had told her that he was a divorcee who stayed with his school going children and a maid.

After the engagement she says that she did not go to his home as he had not yet paid the bride- price.

In January she says Kudakwashe called her to meet someone, and they met Koala Butchery. That is when she claims to have first met the plaintiff and Kudakwashe apologized for not having been truthful that he was a married man. She says she was visibly shaken, and they drove for a

distance. When the car stopped, she says plaintiff then introduced herself as Kudakwashe's wife and said she did not want to hear anything from her and ordered that the relationship should end.

She averred that Kudakwashe then informed plaintiff that defendant was pregnant for him. The plaintiff is said to have insisted that the defendant should not phone or contact her husband and they would discuss the issue of the baby after birth. This is said to have happened sometime in January 2023 and end of January, in less than a week, she says she was called by one Simba Takawira who said he was the plaintiff and Kudakwashe's pastor. She was invited for a meeting at their church and she initially refused but later drove there. Upon attendance Simba Takawira and his wife attended to her and said since she knew there was a wife, the ring she had, had spiritual ties and it was supposed to be removed before a pastor. She says she removed it and handed it to the pastor. On the pregnancy, the pastor is said to have said since she was not a woman of straw, she could look after the baby on her own.

The defendant said that after this there was a moment of tranquility until Kudakwashe called her using a different number and said he wanted to repay \$150.00 he had borrowed. They failed to meet up at the corner of R.G Mugabe Street and Rotten Row Street as Kudakwashe had left. She was in the company of an unnamed woman. She says Kudakwashe then invited her to his home in Chitungwiza to collect the money but upon arrival she was confronted by the plaintiff who came out holding a mop and she started assaulting her and pulled her into the yard whilst shouting. She says she got scars from the assaults, but she never retaliated. Her phone was smashed, and she got a medical report from Chitungwiza hospital which noted that the injuries were serious. She never got the money she had gone to collect. No crowd gathered as there is a Durawall.

The defendant insisted that she was not aware of plaintiff's marriage to Kudakwashe who never went around wearing his marriage band.

It is denied that the defendant ever cohabited with Kudakwashe, nor that he spent the night with him.

On her alleged lack of remorse, the defendant said that it was in fact the plaintiff who refused to meet her privately to enable her to apologize. She denied that she had called the plaintiff bragging. She denied meeting Rodney except at Chitungwiza Magistrates Court. She also denied visiting plaintiff's church in July 2022.

It was strongly averred that the affair with Kudakwashe ended when defendant attended before the pastor and handed over the ring and they have nothing to do with each other as she is singlehandedly taking care of the child. She denied that she is of a violent disposition as well as the alleged moral standing given by police officers. She said that she is not a public figure, she does not go to pubs, nor is she a drunkard.

Under cross examination, it became evident that the defendant was mixing up the dates on which she went to plaintiff's house as she said it was end January or early February yet her statement before the Chitungwiza Magistrates Court says she went on 14 January 2023.

She had also said she went on the invitation of Kudakwashe to collect money but in the Chitungwiza Magistrates Court proceedings under Case No. B 93/23 in her opposing affidavit appearing on pg 72 she said that it was plaintiff who lured her to the house. It was then put to her that she had gone to the house to cause havoc.

The defendant explained that she had lodged the complaint of assault after a week as she was not feeling well and was pregnant. She was quizzed on having gotten the medical report some 9 days later and why it was not given weight in the criminal assault matter and said it was not true.

When the court sought clarification, it pointed out the inconsistency in the plaintiff's evidence wherein before this court she now says the plaintiff assaulted her with a mop yet on pg 72 of the consolidated record she said that the plaintiff assaulted her with open hands and booted feet. She explained that it may be a typing error as she has maintained the same statement.

When it was put to the defendant that she had been in WhatsApp communication with the plaintiff from as far as September 2022, she denied that. It was pointed out that she had not denied these averments in the Magistrates Court and she said she did not know about that.

Regarding the name of her child born to Kudakwashe, defendant said he is Mikaya but has no birth certificate yet. She denied that Kudakwashe had opened a business for her child under the name KJ Motors meaning Kudakwashe Junior Motors, she denied this. It was pointed out that the contact details on the company were hers and she admitted that.

It was suggested that Kudakwashe's withdrawal of the peace order application is an indication that the affair was continuing. This too was denied.

With this evidence the defendant closed her case.



### **The Law on Adultery**

It is important to understand the basis of such a delictual claim in the context of a marriage institution. A marriage is defined as a *sui generis* contract entered into by two willing parties (see Ncube, *Family Law in Zimbabwe* 1987). The sanctity of this anomalous contract is what an adultery damages claim seeks to protect. The claim should not be viewed in isolation but from the viewpoint of its purpose, being to protect the sanctity of marriage per MWAYERA J (as she then was) in *Njodzi v Matione* HH 37/16.

The case of *Misho v Sithole* 1992 (2) ZLR 291 (SC) set out the law as follows:

“An adulterer is only liable for adultery damages if she knew at the time of sexual intercourse that her sexual partner was married. A claimant is entitled to claim damages under two heads, namely:

1. Loss of consortium. This claim could include loss of love, companionship, sexual privileges and assistance in good and bad times which a spouse is entitled to expect and consequent mental distress.
2. *Contumelia*. This claim is for infringement of privacy, dignity and reputation.”

TSANGA J, in the case of *Dambudzo Oliver Munyebvu v Talent Musvibe* HH 292 – 22 sets out how to go about quantifying the damages. She states as follows:

“As to the quantum for loss of consortium and contumelia the facts taken into account are outlined in the case of *Misho Sithole* above and include: -

- (a) the character of the woman involved.
- (b) the social and economic status of the plaintiff
- (c) whether the defendant has shown contrition and apologized
- (d) the need for deterrent measures against the adulterer to protect the innocent spouse against contracting HIV from the errant spouse, and
- (e) the level of awards in similar cases.”

### **Analysis of the Evidence and Application of the Law To The Facts**

The plaintiff gave detailed evidence of her encounters with the defendant which details tally with those appearing in the application for a protection order filed under case B 93/2023 which she filed against the defendant. Though the defendant opposed that application, an order in favour of the plaintiff was granted by consent.

The evidence of Rodney Munyaradzi Chakadya also tallied with hers.

She was consistent and unshaken, and I accept her evidence as credible overall. It was not questioned that plaintiff, and her husband were in a monogamous marriage. The only issue in contention is whether the defendant was aware of the existence of the marriage at the time of such a relationship.

Though the defendant denied any such knowledge, she was overall not a credible witness and her version of events is implausible. Just a few examples which I already set out are how she easily mixed-up dates on her encounters with the plaintiff. She made bare denials of the plaintiff's detailed testimony. Most destructive to her credibility was how she made up a totally different tale on her visit to Chitungwiza, the plaintiff's home, denying her statements made on oath. On the one hand she said she was lured by the plaintiff, yet now she says it was Kudakwashe who invited her to pay back a loan.

Whilst in papers before the Magistrates Court she had alleged that the plaintiff assaulted her with open hands and booted feet, before me this had dramatically changed to the plaintiff having accosted her with a mop and assaulting her seriously that she suffered some scars. This difference could not be explained. The medical report acquired some 9 days later was discarded as not helpful in the assault case.

A witness who lies like the defendant is not a credible witness and is manifestly unreliable. She cannot be credible in one breath and not credible in other respects. In *S v Hartlebury and Anor* 1985 (1) ZLR (HC), it was held that if a witness' evidence is discredited, is unreliable and not credible, his or her evidence cannot be relied upon.

It is so with the defendant's evidence. This court cannot rely upon it.

It is my finding therefore that at the time the defendant got into an affair with the plaintiff's husband, she was aware of the existence of their monogamous marriage. In my balancing of the contrary probabilities presented by the plaintiff and the defendant, I find that the plaintiff's version seems to be the more plausible/credible/acceptable conclusion. This means that on the first leg of the issue before the court I find that the defendant was and is still having an adulterous relationship with the plaintiff's husband.

The next issue to decide is whether the plaintiff is entitled to any damages from the defendant. Under the head of loss of consortium which includes loss of love, companionship, sexual privileges and assistance in good and bad times which a spouse is entitled to expect and the consequent mental distress, the plaintiff gave detailed evidence.

She related how she is no longer enjoying sexual privileges and even got to the point where she thought since her husband was diabetic, that might be the cause. Her husband set the record straight and indicated he was getting all the sexual privileges he required, from the defendants. He now stays away all night or comes in the early hours of the morning too exhausted to do anything.

They have stopped going on holidays as a family and celebrating birthdays and anniversaries to the extent that the children are confused.

The plaintiff's husband says that he is only waiting for the outcome of this matter to move on. He is said to have stopped giving the necessary assistance in the maintenance of the children.

There is basically no more love, companionship and assistance from her husband who now taunts her and emotionally abuses her as he boasts of his escapades with the defendant. He has even shirked his maintenance responsibilities in favour of the child he has with defendant, and he throws this in plaintiff's face.

To all this, the defendant offered a bare denial some of which was discredited in evidence such as the existence of a company whose company details were hers which plaintiff's husband had boasted about as one opened for a child's benefit.

On the question of *contumelia*, the plaintiff gave evidence of how the defendant had published pictures of her and plaintiff's husband in a compromising position, the alleged engagement photos and how this affected her standing in church where she and her husband were leaders and were demoted from being elders. She was serving in the worship team and was visible to all congregants.

At their workplace where she says they were considered an ideal couple and many came to them for counselling, she says she has lost face.

Within the family where they used to be considered as mother and father by her husband's siblings, she says they are now shunned and not consulted where they used to be consulted.

The plaintiff says she was humiliated in the neighbourhood when the defendant went to her house shouting obscenities and banging the gate as she had come with the aim of causing chaos. A mob even gathered at her gate.

The criminal complaint of assault which was lodged by the defendant which dragged for six months is said to have caused her embarrassment at work as she missed work sometimes and had to explain her reasons for absence.

The incident where the defendant is alleged to have taken the key out of the ignition in a car where plaintiff and her husband were in, is a serious invasion of their privacy.

The defendant's insulting calls to the plaintiff in which she is said to have been boasting of her conquest and body shaming her are further illustration of infringements of plaintiff's privacy.

There can be no doubt that in this case there was infringement of the plaintiff's privacy, dignity and reputation.

It is also clear that the plaintiff is a well-respected woman in her family, workplace, community and church. As shown above, her good standing was tarnished by the defendant's conduct.

On the other hand, the defendant's character of violence where one has the foolhardiness to go to the home of a woman whose husband she is in an affair with, leaves a lot to be desired. She even had the guts to report the same woman for an assault, harassing her further in the process for a good 6 months.

Clearly the defendant has not shown any contrition as she has continued with the affair and has verbally harassed the plaintiff. When announcing she was pregnant to the plaintiff's husband, she even announced that she had, had two prior miscarriages.

I now turn to consider the levels of awards in similar matters.

In the case of *Shamhu v Taderera* HMA 9/23 ZISENGWE J opined that the amounts awarded in comparable cases range from USD 5000 to USD 20 000 depending on the particular set of circumstances of that case. Damages in the amount of USD 13 000 were awarded.

In *Mapiye v Mudyiwa* HH 399/18 the court awarded adultery in the amount of USD 10 000.

See also *Monica Muerudza v Ropafadzo C Magora* HC 6334/13 where adultery damages in the amount of USD 8 500 were awarded.

Given my thorough assessment of the factors to be considered in quantifying adultery damages, the conduct of the defendant and all the circumstances of this case, it is my considered view that this is a case requiring deterrent measures to those who may be like minded to defendant.

I accordingly order payment of the following:

1. The defendant is to pay plaintiff as follows:

- (i) USD 10 000 for *contumelia*
- (ii) USD 10 000 for loss of comfort, society and services

Total is USD 20 000

2. The defendant to pay costs.

**MUCHAWA J:** .....

*Rufu – Makoni Legal Practitioners*, plaintiff's legal practitioners  
*Mabundu & Ndlovu Law Chambers*, defendant's legal practitioners