

ESTHER HOMWE
versus
CLIFF MAPONDERA

HIGH COURT OF ZIMBABWE
MAXWELL:
HARARE; 5 November 2024 & 13 February 2025

Opposed Matter – Application for Contribution to Legal Costs

Applicant in person
P R Zvenyika, for the Respondent

MAXWELL J

The Applicant approached the court in terms of Rule 67 (1) and (2) of the High Court Rules 2021. The rule provides as follows:

“ 67 (1) when a spouse is without means to prosecute or defend an action for divorce, judicial separation or nullity of marriage, the court may on application order the other spouse to contribute to his or her costs, and where necessary to his or her maintenance pending litigation such sums as it seems reasonable and just (2) such an application must be supported by an affidavit stating shortly the grounds of the action or defence and that the Applicant has insufficient means with which to prosecute or defend the action, as the case may be, and insufficient means to support himself or herself pending litigation, and whatever information is available respecting the spouse’s financial position.”

Applicant stated in the Founding Affidavit that Respondent issued summons in 2021 seeking a decree of divorce and ancillary relief. Parties appeared before a Judge for a Pre – Trial Conference and Respondent raised a new issue, a new ratio for the division of the matrimonial home. Respondent’s counsel amended the summons and declaration. Applicant stated further that she is gainfully employed and contributed significantly toward the matrimonial home both directly and indirectly. The property is registered in the names of both parties. Applicant submitted that she lacks the means to engage legal counsel and that Respondent has an obligation to assist her in that regard as he has the means to do so. She prayed that the Respondent be ordered to contribute USD 600,00 towards her legal fees in the matter HCH 3534/21.

The Respondent opposed the application. He stated that he amended the summons and declaration after discovering the documentary evidence on the purchase of the stand on which the matrimonial house was built, which documents could not be located earlier. He disputed that the Applicant was gainfully employed at the time the vacant stand was purchased. He pointed out that Applicant should get help from the Legal Aid Directorate or Zimbabwe Women Lawyers Association (ZWLA) for free. He disputed that he has the financial means to assist the Applicant with her legal costs. He declared that he earns \$ 250.00 as a truck driver and that his expenses exceed his earnings and at times he gets help from relatives and close friends. He also gets paid trip bonuses by his employer at times. He pointed out that Applicant attached an April 2024 payslip yet she filed the application on 29 July 2024. He disputed the amount Applicant is claiming and the basis thereof.

In her Answering Affidavit, the Applicant pointed out that she does not qualify to be assisted for free by the Legal Aid Directorate as she is employed and also has a share in the matrimonial home. She further pointed out that ZWLA has scaled down operations due to funding issues. She challenged the Respondent's income on the basis that allowances are not reflected on the letter submitted. She insisted on the amount she claimed.

The requirements for contribution of legal costs were pronounced in the South Africa case of *Botes v Botes* 1909 (3) SA 169 as:

- 1) There must be a subsisting marriage;
- 2) The suit in question must be a matrimonial one;
- 3) The Applicant must have reasonable prospects of success;
- 4) The Applicant must show that she is not in a financial position to bring/ defend the action as the case may be) and
- 5) The other spouse is able to provide the Applicant with his contribution.

See also *Chinyamakobvu v Chinyamakobvu* HH 181/14.

There is no question about the first two requirements. There is a subsisting marriage and HCH 3534/21 is a matrimonial matter. On the prospects of success, I believe Applicant has an arguable case. She insists that her contribution entitles her to 50 % whereas the Respondent argues that because he acquired the vacant stand on his own, he is entitled to more than 50%. The proportion of Applicant's contribution to the development of the vacant stand vis-

a-vis the value of the vacant stand will have to be determined in the trial. In addition, case law has established that you cannot put a value on the indirect contribution made by a mother. In this case four children were born of the parties union. I am satisfied that Applicant has prospects of success.

Whether or not Applicant has the financial means to engage a legal practitioner is the next question. Applicant produced her payslip. The only issue raised by the Respondent on the payslip is that Applicant “can afford to buy furniture on credit as evidenced by the deduction of US \$ 39,53 to TV Sales and Home.” Though Respondent also criticizes Applicant for filing an April 2024 payslip in July, he does not submit that by July 2024 Applicant’s salary had changed. Applicant received a USD salary of US \$ 196,84 and ZW\$ 45,52. I am satisfied that she does not have the capacity to engage the services of a legal practitioner.

The last question to consider is whether or not the Respondent is able to provide the Applicant the contribution required, While the Applicant’s justification of the figure is that she consulted legal practitioners, there are still pleadings to be drafted as Respondent amended his papers. The roundtable and pre-trial conferences are to be reconvened. She believes that the trial might require 4 days. I am satisfied that the amount claimed is reasonable. Respondent has not taken the court into his confidence. He did not disclose his total income per month. The proof of employment he submitted says he earns \$250,00. In para 8:2 of his opposing affidavit he mentions obligations that total \$ 450.00 excluding a minor child’s fees, stationary and groceries. He did not specify how much he gets from unnamed relatives and unnamed close friends. He does not mention how much he gets as bonus for trips. Respondent is simply unwilling to provide Applicant with any contribution, not that he lacks the means to do so. Moreover, the alteration of his previous position where the parties were to share the property equally necessitated the trial procedure. Applicant’s claim therefore succeeds.

I make the following order.

1. The Respondent be and is hereby ordered to pay US \$ 6000.00 to the Applicant’s legal practitioners of choice as contribution towards the Applicant’s legal costs in case number HCH 3524/21.

2. The Respondent be and is hereby ordered to pay costs of suit.

A handwritten signature in black ink, appearing to read "Maxwell". The signature is written in a cursive style with a large, stylized initial "M" that loops around the first letter of the name.

Messrs Muchirewesi & Zvenyika, Respondent's legal practitioners