

LAURA SIBYL FREETH (NEE CAMBELL)
versus
BENJAMIN JOHN FREETH

HIGH COURT OF ZIMBABWE
WAMAMBO J
HARARE 22 September 2023, 17 October 2023 and 17 February 2025

Opposed Matter

A Manuel, for the appellant
F Mahere, for the respondent

WAMAMBO J: This matter concerns an application for contribution towards legal costs and maintenance pendente lite.

The parties are husband and wife having married under the Marriage Act (Chapter 5:11) now [*Chapter 5:17*].

Applicant instituted divorce proceedings which were stalled due to a number of challenges culminating in the divorce matter being removed from the roll. Three children were born of the marriage. Two, of the children are now majors and self-supporting while the youngest was born on 12 May 2005 and at the time of the execution of applicants founding affidavit was attending upper six.

The following form the bedrock of the application as per the founding affidavit. Applicant is unemployed and tried to resuscitate her linen business without success. She bakes cakes, mostly as a hobby. Respondent sent her US\$2800 on 12 June 2021 and GBP1000,00 on 14 June 2021, to cater for legal expenses.

From 1 February 2022 to 31 May 2022, she was employed by Connections Café as a consultant and earned a gross salary of US\$2390,00. This contract was extended to December 2022 wherein she oversaw and completed the kitchen and restaurant renovations and also trained the chefs.

Applicant attached Annexure “K” which reflects the income she received from the baking business. Applicant is 52 years old and a qualified chef. She has failed to find employment. A tenant rents a section of her house since June 2022 and relays a monthly rental of US\$1500,00.

She and respondent resided at her parents` farm from 1999 to 2009. During seven of those years, she was the sole bread winner running a hand embroidered linen business employing 120 women. Respondent used to pay general expenses upon employment by the Mike Campbell Foundation in 2011. He stopped the financial contributions in July 2021. Respondent earns £4200 per month. He has travel costs and a pension plan catered for by the Foundation.

Respondent resides at his parents home in the United Kingdom, Applicant details respondent`s travels.

Applicant avers that she has had to borrow money from Alex Kirkman, Angela Campbell, Cath and Tim Middleton and Sue Williams. The amounts she avers she borrowed and the circumstances under which the money was borrowed is detailed in paragraph 28 of her founding affidavit.

Applicant is applying for US\$1500 per month as maintenance pendente lite. She avers that that amount accords with her general monthly spending and that the money will help in the maintenance of the house she and her youngest daughter live in pending the finalization of the divorce. Annexure T1, T2 and T3 reflect her current income expenditure and supporting vouchers.

Applicant justifies her need for the services of a legal practitioner on account of the pending divorce proceedings. Annexures U1 to U4 speak to this issue. She avers that she is represented by a lawyer of considerable seniority who is a senior legal practitioner with considerable experience and expertise in matrimonial matter. She places the prescribed charges at US\$350,00 per hour.

The fact that the respondent resiled from the consent paper and seeks to amend his plea makes it probable that the determination of the matter may face delays which adds to the legal costs. Applicant details the amounts she has managed to disburse to her legal practitioners. She avers that she owes US\$17 040 to her lawyers.

Applicant relates to transferring GBP18 000 to respondent`s personal account to which she has no access. She has resorted to selling a piano and other furniture of sentimental value to cater for her living expenses. She considers a contribution of US\$20 000 towards her legal costs as sufficient and appropriate.

Ms Manuel for the applicant submitted that the evidence of applicant`s income and expenditure was not challenged in the opposing affidavit. She further submitted that respondent

did not make a full disclosure of his expenses and that applicant disputes in the Answering affidavit that respondent is paying for the youngest child's expenses.

The respondent's stance is that this is not a proper case for maintenance pendente lite and contribution for legal costs, It is averred that the US\$1500 rentals for a portion of the house should be distributed equally between the parties as they jointly own the house. Respondent has allowed applicant to enjoy the rentals on her own.

It is averred that applicant barred respondent from residing at the matrimonial home. Respondent says he is unable to disburse the amounts claimed by applicant as he is also solely responsible for the school fees of the child who is still attending school. The respondent made an offer to applicant which she spurned. It is respondent's position that all the cars were bought through direct financial contribution by him.

Ms Mahere for the respondent submitted that the respondent signed the consent paper under duress while also grieving for his late father. She further submitted that the application is mala fide as applicant earns more income than respondent through her baking business. It was submitted that applicant chose an expensive legal practitioner, which position is not supported by the law.

Rule 67(1) of the High Court Rules, 2021 provides as follows:

“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 deems reasonable and just.”

In *Audrey Rungano Chimombe (nee Magume) v Tapiwa Mark Chimombe* HH622/2 at page 8 MUREMBA J said:

“Considering that maintenance pendente lite is intended to afford temporary relief to the applicant pending divorce, I decided that it was best in the circumstances to order payment of an amount which would restore the status quo ante. I got guidance from *Galante v Galante* 2000(2) ZLR 453(S) wherein the Supreme Court said ‘... maintenance pendente lite is intended to afford temporary relief thus the Courts do not insist on the claim being presented with the same precision and exactitude as a claim for maintenance after divorce. The Court must always endeavour to arrive at a figure within the payer's means which allow the continuation of a comparable standard of living to that formerly enjoyed.’”

Borrowing from the above principles I find that respondent should pay US\$1500 maintenance pendente lite per month. The reason is that applicant averred in her founding affidavit in para 22 that respondent used to disburse US\$1500 to her every month. Notably in the opposing affidavit respondent does not object to the averment nor bring it forth that he can not or no longer afford the said amount. By ordering the payment of US\$1500 per month to

applicant this will restore the status quo ante, as detailed above. From his salary of over £4000 respondent can afford to pay US\$1500 per month. It is common cause that respondent will only pay that amount on a temporary basis pending the finalisation of the proceedings.

I now turn to a contribution towards legal costs.

In *Lara Jane Duncan v Ian Cameron Duncan* HH651/16 MWAYERA J (as she then was) said the following about an application for contribution towards legal costs at p1:

“What falls for determination can be summarised as follows:

1. Whether or not the respondent ought to contribute to the applicants’ legal costs.
2. Whether or not the applicant should cater for her legal fees and
3. If the responded is liable to contribute, what is the reasonable and justifiable quantum in the circumstances”

The learned Judge continued as follows at page 2:

“The contribution is clearly based on the duty of the support by the responsible person. Of necessity, one has to consider the ability of the responsible person, also the nature of litigation and the financial standing of the person claiming such contribution before coming up with a fair and just quantum of contribution. The Court of necessity has to make a value judgement based on the income and assets of the respective parties viz a viz the nature of contested litigation *see Msimanga v Sikhumbuzo Mavako Dube* HB781/06 where SMITH J had this to say at p.7:

“The Court must look at the means of both parties and try to determine what is reasonable and just”

See also *Barrass v Barras* 1978 RLR 348 *Landry v Landry* 1979 (1)RLR 348 *Landry v Landry* 1979(1) RLR at 134 *Chamoni v Chamoni* 1979(4) SA 804 and *Chiyangwa v Chiyangwa* HH173/16”

I note that a consent paper was executed by the parties. The same is now being impugned by the respondent for various reasons. I will not at this stage make findings on whether or not the reasons advanced for resiling from the consent paper are valid as such is not the application before me. The fact that at some stage the parties sought to agree on the issues through a consent paper suggests that short divorce proceedings were anticipated. Short, because there would have been no need for long viva voce evidence by the parties and possibly their witnesses, production of exhibits and generally long hours of appearances in Court.

Now that the consent paper is under attack, the complexion of the matter has changed. A glimpse at the plaintiff’s declaration reflects that the issues of custody of the youngest child which was then in contention appears to have been overtaken by events. The plaintiff’s declaration was executed on 28 June 2021 when Anna Kate (the youngest child) was still a minor. The other major issues involve distribution of the matrimonial home, 7 Duthie road

Belgravia, Harare and the distribution of the other immovable property in Bvumba Highlands Harare. It appears that there is also another immovable property in contention, namely a property referred to as Connie Cottage in Mozambique. Further there are issues of motor vehicles and household property to be distributed.

The issues under contention do not appear to be grossly disproportionate to the issues normally determined in the average divorce. Chances of the parties whittling the issues to a bare minimum cannot be discounted.

Although applicant runs a business and receives rentals it would appear that though she may require assistance for legal costs, the contribution should not be as high as US\$20 000. Applicant avers that she owes the lawyers US\$17 040. She deliberately chose a senior legal practitioner who will obviously bill her on a higher tariff. Respondent is indeed a man of means.; He is not enjoying the rentals from the 7 Duthie road property.

I am of the view in the circumstances that the trial may not proceed for more than three days on the issue as they stand. I do not hold the view that it will be a long-contested trial in the circumstances.

I have also considered the income applicant derives from her business and that she is around 52 years old. I hold the view that she has proven the need for a contribution from respondent. In the circumstances of this case, I find that a contribution of US\$20 000 is rather high, I find that a contribution of US\$10 000 meets the circumstances of this case. The applicant has been partially successful on the application for contribution towards legal costs. Considering the nature of the application and the pending divorce matter. I am of the view that each party should bear its own costs in this matter. Accordingly, it is ordered as follows:

1. The respondent be and is hereby ordered to contribute the sum of US\$10 000 towards the applicant's costs in the divorce proceedings in HC3490/2021.
2. The respondent shall pay maintenance pendente lite in the sum of US\$1500, 00 per month with effect from 1 February 2025.
3. Each party shall bear its own costs.

Athersone and Cook, applicants' legal practitioners
Scanlen and Holderness, respondents' legal practitioners