

VIOLA DHUDHLA MACHINGURA  
versus  
EUGENIA MACHAYA

HIGH COURT OF ZIMBABWE  
**MAMBARA J**  
MASVINGO; 17 and 23 April 2025

### **Unopposed Summons**

*P. Chimwanda*, for the plaintiff  
Defendant in default

MAMBARA J: This matter was set down on the unopposed roll after the defendant's plea was struck out for non-attendance at the pre-trial conference and her subsequent application for rescission was deemed abandoned. Liability is therefore not in issue; the court is seized only with the assessment of quantum under r 25(1) of the High Court Rules, 2021.

The plaintiff seeks US \$50 000, broken down into US \$30 000 for *contumelia* and US \$20 000 for loss of consortium, arising from a protracted adulterous relationship between the defendant and the plaintiff's husband that began in 2019, produced two children, and led to the effective desertion of a 41-year civil marriage.

#### Applicable Principles

When fixing adultery damages the court considers—

1. the nature and duration of the marriage;
2. knowledge of the marriage by the adulterer;
3. character and social-economic standing of the parties;
4. the extent of *contumelia* and loss of consortium proved;
5. contrition (or lack thereof) by the adulterer;
6. the need for deterrence; and
7. the level of awards in comparable cases.

These factors were restated in *Njodzi v Matione* HH 37-16 and *Shamhu v Taderera* ZWMSVHC 19-23

## Evidence on Quantum

### *Contumelia*

The plaintiff, a retired university lecturer and church elder, testified—through affidavit—to public humiliation in her congregation and community, severe emotional trauma requiring medical treatment for diabetes, hypertension and depression, and the stripping away of her role in the family estate (bank accounts, farm operations and vehicles).

### *Loss of Consortium*

Since 2019 the plaintiff's husband has cohabited with the defendant; intimacy, companionship and joint family life have ceased entirely. The marriage now subsists only in name.

The defendant, despite service, elected to remain absent and therefore offered no apology or mitigation.

### Comparable Awards

<b>Case</b>	<b>Year</b>	<b>Contumelia</b>	<b>Consortium</b>	<b>Total</b>
<b>Njodzi v Matione</b>	2016	US \$15 000	US \$10 000	US \$25 000
<b>Shamhu v Taderera</b>	2023	US \$5 000	US \$8 000	US \$13 000
<b>Taoneyi v Madzima</b>	2025 (HH 18-25)	US \$10 000	US \$10 000	US \$20 000

No reported High Court decision after Taoneyi has exceeded the composite figure of US \$20 000. Inflation-adjusted though that award is, it remains the highest recent comparable award placed before the court.

### Assessment

Taking into account—

- the plaintiff's long, otherwise stable marriage;
- the flagrant, ongoing nature of the adultery and the birth of two children;
- the defendant's total lack of contrition; and
- the deterrent function emphasised in *Khumalo v Mandishona* 1996 (1) ZLR 434 (H) and later cases,

The court is satisfied that an award modestly above the most recent ceiling of US \$20 000 is justified to reflect both changing economic realities and the egregious facts of this case.

Accordingly, it is ordered that:

1. The defendant shall pay to the plaintiff the sum of *US \$25 000* (Twenty-Five Thousand United States Dollars), made up as follows:
  - o (a) *Contumelia*: US \$16 000
  - o (b) Loss of consortium: US \$9 000
2. Interest shall run on the above amount at the prescribed rate of 5 % per annum from the date of this judgment to the date of full and final payment.
3. The defendant shall bear the plaintiff's costs of suit.



**MAMBARA J.....**

*Saratoga Makausi Law Chambers*, plaintiff's legal practitioners