

**IN THE CENTRAL DIVORCE COURT
HELD AT JOHANNESBURG**

CASE NO:I70/97

IN THE MATTER BETWEEN:

P.M.

PLAINTIFF

AND

E.M.

DEFENDANT

BEFORE: Z. MOLETSANE, PRESIDENT

ON 29 NOVEMBER 2000

***DISSOLUTION OF A CUSTOMARY MARRIAGE SECTION 8 OF THE
RECOGNITION OF CUSTOMARY MARRIAGES ACT NO 120 OF 1998.***

***PROPRIETARY CONSEQUENCES OF A CUSTOMARY MARRIAGE
ENTERED INTO BEFORE 15 NOVEMBER 2000 (OPERATIONAL DATE OF
THE RECOGNITION OF CUSTOMARY MARRIAGES ACT, 1998).***

PLAINTIFF (HUSBAND) AND DEFENDANT (WIFE) WERE MARRIED ON 23 JUNE 1982 ACCORDING TO AFRICAN CUSTOMARY LAW AT BOCHUM, NORTHERN PROVINCE. A MARRIAGE CERTIFICATE CONFIRMING THE MARRIAGE WAS SUBMITTED AS EXHIBIT 'A'.

SIX MINOR CHILDREN WERE BORN OF THE MARRIAGE NAMELY;

G. A BOY, 19 YEARS OLD

M. A GIRL, 17 YEARS OLD

R. A BOY, 15 YEARS OLD

G. A GIRL, 12 YEARS OLD

AND TWINS, S. A BOY, 10 YEARS OLD AND,

S. A BOY, 10 YEARS OLD.

THE PLAINTIFF ISSUED SUMMONS DURING JANUARY 1997 STATING IN HIS PARTICULARS OF CLAIM THAT THE MARRIAGE HAS BROKEN DOWN IRRETRIEVABLY BECAUSE HE AND DEFENDANT HAVE BEEN SEPARATED FOR FIVE YEARS AND HE HAS LOST LOVE AND AFFECTION FOR DEFENDANT. HE STATED THAT HE IS THE MAJOR CONTRIBUTOR OF MARITAL ASSETS AND THAT DEFENDANT CHASED HIM OUT OF THE COMMON HOME IN 1992 AND HIS PRAYERS WERE:

DECREE OF DIVORCE.

FORFEITURE OF THE PATRIMONIAL BENEFITS (THE MATRIMONIAL HOME).

*CONCEDED CUSTODY OF THE MINOR CHILDREN TO DEFENDANT.
OFFERED MAINTENANCE OF R100 PER MONTH PER CHILD.*

DEFENDANT CONTESTED THE MATTER AND FILED A PLEA AND COUNTERCLAIM DENYING ALLEGATIONS BY THE PLAINTIFF. DEFENDANT'S VERSION IS THAT PLAINTIFF CAME TO JOHANNESBURG IN 1983 AND OCCASIONALLY VISITED HER AND THE MINOR CHILDREN. PLAINTIFF RESIDES PERMANENTLY IN JOHANNESBURG AND DOES NOT INTEND TO REVERT TO BOCHUM, WHERE THE MATRIMONIAL HOME IS SITUATED.

THE DEFENDANT'S PRAYERS ARE:

*DECREE OF DIVORCE.
CUSTODY OF MINOR CHILDREN.
MAINTENANCE OF R250 PER MONTH PER CHILD.
DIVISION OF THE JOINT ESTATE.
50% OF PLAINTIFF'S PENSION INTEREST.*

PLAINTIFF REPLIED TO THE COUNTERCLAIM AND THE PLEADINGS WERE CLOSED. THE CASE COULD NOT BE TRIED IN COURT BECAUSE THE CENTRAL DIVORCE COURT AS FOUNDED BY THE BLACK ADMINISTRATION AMENDMENT ACT OF 1929 DID NOT HAVE JURISDICTION OVER CUSTOMARY MARRIAGES.

THE MATTER WAS THEN SET DOWN FOR TRIAL AFTER THE RECOGNITION OF CUSTOMARY MARRIAGES ACT BECAME OPERATIONAL ON 15 NOVEMBER 2000. THE MATTER HAS NOT SUPERANNATED BECAUSE THERE WERE A NUMBER OF PAPERS E.G. DISCOVERY NOTICES AND AFFIDAVITS EXCHANGED BETWEEN THE PARTIES PRIOR TO THE TRIAL DATE.

BOTH PARTIES LED *VIVA VOCE* EVIDENCE AS TO THE IRRETRIEVABLE BREAKDOWN OF THE MARRIAGE.

IT IS COMMON CAUSE THAT THE MARRIAGE BETWEEN THE PARTIES IS A CUSTOMARY MARRIAGE AND THAT IT HAS REACHED A STATE OF DISINTEGRATION TO AN EXTENT THAT IT CANNOT BE SAVED. THAT IS, THE MARRIAGE HAS BROKEN DOWN IRRETRIEVABLY.

THE POINT IN DISPUTE IS WHETHER A CUSTOMARY MARRIAGE ENTERED INTO BEFORE THE RECOGNITION OF CUSTOMARY MARRIAGES ACT BECAME OPERATIONAL ON 15 NOVEMBER 2000, IS A MARRIAGE IN COMMUNITY OF PROPERTY OR NOT.

THIS QUESTION IS ADDRESSED BY *SECTION 7(1)* OF THE RECOGNITION OF CUSTOMARY MARRIAGES ACT, 1990 WHICH PROVIDES AS FOLLOWS :

"THE PROPRIETARY CONSEQUENCES OF A CUSTOMARY MARRIAGE ENTERED INTO BEFORE THE COMMENCEMENT OF THE ACT CONTINUE TO BE GOVERNED BY CUSTOMARY LAW".

ACCORDING TO CUSTOMARY LAW A WIFE IS A PERPETUAL MINOR AND CANNOT OWN, OR ALIENATE PROPERTY AND IS SUBJECT TO AUTHORITY OF HER HUSBAND. ONLY HUSBANDS CAN OWN AND ALIENATE PROPERTY.

THE COURT APPLIED THE PROVISIONS OF *SECTION 7(1)* IN DEALING WITH THE PROPRIETARY CONSEQUENCES OF THE DIVORCE *IN CASU*. THAT IS NEITHER DEFENDANT'S ORDER OF FORFEITURE OF PATRIMONIAL BENEFITS ARISING OUT OF COMMUNITY OF PROPERTY NOR DIVISION OF THE JOINT ESTATE WAS AWARDED.

THE PLAINTIFF HOWEVER OFFERED 50% OF HIS PENSION INTEREST TO THE DEFENDANT.

THE QUESTION OF DETERMINING THE QUANTUM OF MAINTENANCE WAS ADDRESSED AS WELL IN THAT THE COURT ASCERTAINED FROM PLAINTIFF WHAT HIS MONTHLY INCOME IS. PLAINTIFF WORKS AT THE JOHANNESBURG INTERNATIONAL AIRPORT AND EARNS A SALARY OF R2,200 PER MONTH. DEFENDANT IS A HOUSEWIFE AND DOES NOT EARN AN INCOME.

THE COURT WAS SATISFIED THAT THE PLAINTIFF CAN AFFORD MAINTENANCE OF R200 PER MONTH PER CHILD AS OPPOSED TO THE R100 PER MONTH PER CHILD HE OFFERED.

ORDER

- DECREE OF DIVORCE.
- CUSTODY OF THE 6 MINOR CHILDREN AWARDED TO THE DEFENDANT.
- PLAINTIFF IS TO HAVE ACCESS TO THE MINOR CHILDREN AT ALL REASONABLE TIMES INCLUDING ALTERNATE WEEKEND AND SCHOOL HOLIDAYS.
- PLAINTIFF IS ORDERED TO PAY MAINTENANCE OF R200 A MONTH FOR EACH CHILD. THE FIRST PAYMENT MUST BE MADE ON OR BEFORE 30 DECEMBER 2000 AND ALL SUBSEQUENT PAYMENTS MUST BE MADE ON OR BEFORE THE 30TH DAY OF EACH SUCCEEDING MONTH. ALL PAYMENTS MUST BE MADE AT THE BOCHUM MAGISTRATE OFFICES.
- 50% OF PLAINTIFF'S PENSION INTEREST ACCORDINGLY ENDORSED.

**BY ORDER OF THE COURT
REGISTRAR**