

IN THE HIGH COURT OF SWAZILAND

HELD AT MABANE

Case No. 593 /10

BETWEEN

C B R

Applicant

(N G)

And

W R

Respondent

Coram

OTA J.

For the Applicant

For the Respondent

Mr. Zikalala

JUDGMENT

7TH JANUARY, 2011

The plaintiff **Cidalia Blanche** Rudd instituted action against the Defendant **Wayne Aubrey Rudd** claiming the following:-

1. An order that the Defendant restores conjugal rights to the plaintiff, failing which an order for a final decree of divorce.
2. Custody of the minor child.
3. Costs of suit
4. Further and/or alternative relief.

This process was filed on the 3rd of March 2010. The defendant filed a plea and a counter claim to the plaintiffs claim wherein he claimed as follows:-

1. A final divorce decree.
2. That the agreement be made an order of court.
3. Cost of suit.

Exhibited to the plea in reconvention as annexure B, is an agreement of settlement on the custody of the minor child of the parties. The record shows that on the 11th of November 2010, the plaintiff filed a notice of abandonment, of the claim for restoration of conjugal right. The record also demonstrates that this matter served before **Mabuza QM J** on Monday the 17th day of November 2010. After taking evidence from the defendant and hearing counsel her ladyship made the following orders.

1. The plaintiff (who is the Defendant in reconvension) here by restores conjugal rights to the Defendant (who is the plaintiff in reconvension).
2. Failing which plaintiff should show cause on the 31st of December 2010.

Why a final decree of divorce should not be granted. Why the agreement of settlement entered into by the parties in respect of their minor son's custody should not be made an order of court, and Why each party should not be ordered to pay his/her own costs.

It is on record that on the 31st of December 2010, the matter was further postponed by **Mamba J** to the 7th January 2011, for the plaintiff to show cause. When the matter served before me on the 7th of January 2011, the plaintiff failed to attend court, learned counsel for the defendant **Mr S. Zikalala** prayed the court to grant a final decree of divorce. He also prayed that the agreement of settlement be made an order of court and that each party pays its own costs. His prayers are premised on the fact that the plaintiff failed to show cause as ordered by the court, per **Mabuza QMJ**, on the 17th of November 2010.

Having heard counsel and having considered the totality of the record of proceedings of this case, I am satisfied that there is merit in the relief's sought.

On these premises, I hereby make the following orders.

1. A final decree of divorce is hereby granted
2. The agreement of settlement entered into by the parties in respect of the custody of their minor son is hereby made an order of court.
3. Each party do and is hereby ordered to bear his/her own costs.

OTA J.

JUDGE OF THE HIGH COURT