

IN THE HIGH COURT OF ESWATINI
JUDGMENT

HELD AT MBABANE

CASE NO: 418/2022

In the matter between:

PEDRO MIGUEL VAZ RODRIGUES

PLAINTIFF

And

SONIA ALEXANDRA OLIVEIRA MENDZEZ

DEFENDANT

Neutral Citation:

*Pedro Miguel Vaz Rodrigues v Sonia
Alexandra Oliveira Mendzez (418/2022)
SZHC - 120 [10/06/2022]*

Coram:

B.S DLAMINI J

Heard: 29th April, 2022

Delivered: 10th June, 2022

SUMMARY: *Divorce proceedings- Parties contracting a civil rites marriage in community of property. Marriage concluded in Durban, South Africa. Plaintiff alleging that marriage has irretrievably broken down. Parties concluding a Deed of Settlement.*

Held; *The evidence by the Plaintiff has not been disputed. Proper grounds for divorce established.*

RULING ON DIVORCE PROCEEDINGS

Introduction

[1] This is an action for divorce instituted by the Plaintiff against the Defendant. In the Combined Summons dated 4th April 2022, the Plaintiff is seeking orders as follows;

“ (a) *A decree of divorce*

(b) *Joint custody of the minor children born of the marriage.*

(c) An order that Defendant forfeits the benefits from the civil rites marriage.

(d) Costs of suit in the event Defendant defends the action.

(e) Further and/or alternative relief.

[2] The Defendant is said to be currently resident in Portugal with the two children of the spouses. In addressing the issue of service of the summons upon the Defendant, the Court was informed that an order from the High Court of Eswatini had been obtained to serve the Defendant through attorneys based in Portugal. Indeed on perusal of the Court file, on the 11th March 2022, the High Court (per Mlangeni J) issued an order as follows;

- “1. Leave is granted to the Applicant (Plaintiff) to institute proceedings before this Honourable Court against the Respondent (Defendant) by way of edictal citation for *inter alia*;**
- 2. Service of the Combined Summons be effected upon the Respondent personally at her place of residence at *Caminho das Alfarrobeiras, Edf, Alfarrobeira, R/C ap. 8 8125-414, Vilamoura Portugal* by an Attorney admitted to practice**

before the High Court of Portugal under the style **Mauel
Perreira & Angela Ventosa-Sociedade de Advogados RL,**
Attorneyss-at-Law, Address; Avenida Joao Meireles Edifi
Atrium Escritorio A/, Vilamoura, 8125-406, Quarteira,
Portugal or by the Sheriff or any officer of the Court in
Portugal.

**3. Directing the Respondent to file a Notice of Intention to
Defend, to the Combined Summons within fifteen (15) days
of service of the citation if she wishes to defend.”**

[3] Pursuant to the above captioned order by the High Court, an affidavit of service was filed by one **Angela Ventosa** indicating that personal service of the Combined Summons was effected upon the Defendant as was directed by the High Court of Eswatini in the interlocutory application.

[4] The Plaintiff's evidence under oath was that he is a Liswati male residing at Plot No. 413, Farm 15, Mpumalanga Crescent, Ezulwini Township and that they had been living together as husband and wife with the Defendant from the date of their marriage, namely 14th April

2012. The marriage, according to the Plaintiff had taken place in Durban, South Africa.

[5] The Plaintiff's testimony was that there are two minor children born of the marriage namely;

(a) Daniela Mendez Rodrigues born on the 18th May 2005.

(b) Fabiano Mendez Rodrigues born on the 25th February 2011.

[6] These children, according to the Plaintiff, resided with both parties at their place of abode in Eswatini and were enrolled at Usuthu Forest Primary School prior to their departure to Portugal with their mother.

[7] It is alleged by the Plaintiff that during the year 2018, the Defendant committed adultery with one Ricardo Riberio several times and at different places in the Republic of South Africa. The Plaintiff stated that he did not condone the adulterous conduct by Defendant and that he will never be able to do so in future.

[8] It was the Plaintiff's evidence that the marriage between the parties has irretrievably broken down and that an order for divorce between

himself and the Defendant is proper and competent in the circumstances.

ANALYSIS AND CONCLUSION

[9] During the hearing of the matter, the Plaintiff submitted a 'Deed of Settlement' which according to him makes provision of the terms of settlement between the parties. In a nutshell, it is recorded in the agreement of the parties that;

- (a) They shall have joint custody of the children.
- (b) The Plaintiff shall have unlimited access to the children at all times and whenever he so desires.
- (c) The Defendant shall allow the children to visit the Plaintiff's parental home.
- (d) On signing of the agreement, the Plaintiff shall pay an amount of **E 200,000.00 (Two Hundred Thousand Emalangeni)** to the Defendant.
- (e) The Plaintiff shall pay a sum of **E 800,000.00 (Eight Hundred Thousand Emalangeni)** to the Defendant which amount shall be paid in full within a period of Thirty Six (36) months from signing of the agreement.

- (f) The Plaintiff shall pay a monthly maintenance fee of **E 30,000.00 (Thirty Thousand Emalangeni)** and that once the first child reaches the age of majority, this amount shall be reduced to **E 20,000.00 (Twenty Thousand Emalangeni)**. The obligation to pay this monthly maintenance fee shall come to an end once both children have reached the age of majority.
- (g) The Plaintiff shall continue to pay for the instalment of the motor vehicle currently in the possession of the Defendant valued at E 350,000.00. Once this motor vehicle is fully paid up, the Plaintiff will not be under an obligation to purchase another motor vehicle for the Defendant.
- (h) The Plaintiff shall continue to pay for Defendant's contract cellphone for the next two years and will also pay for the contract cellphones of the children.
- (i) The Plaintiff shall continue to pay for all school fees and all tertiary fees of the children in Portugal until they complete their schooling.
- (j) Each party shall retain and/or keep as their sole property, all movable assets currently in their possession.

[10] The laws governing the marriage of the parties in the present matter are the laws of the Republic of South Africa. In the South African case of *Levy v Levy* (494/89) [1991] ZASCA 81; 1991 (3) SA 614 (AD); [1991] 2 All SA 407 (A) (30 May 1991), it was held by the Court that;

“[9] ...Adultery and malicious desertion constituted a breach by the defendant of his marital obligations. Thus, apart from the possible exception of life imprisonment, entitlement to divorce was based on fault: the fault of the defendant. In 1935 the Legislature added two further grounds of divorce, viz the incurable insanity of the defendant and the imprisonment of the defendant for five years after having been declared an habitual criminal (see Act 32 of 1935, s 1 (1)). Section 3 (a) of the Act, read with s 4, introduces a ‘no-fault’ criterion for the grant of divorce, viz irretrievable breakdown of the marriage. The Court may grant a decree of divorce on this ground if it is satisfied, as an objective fact, that the marriage has reached such a state of disintegration that there is no reasonable prospect of the restoration of a normal marriage

relationship between them. Section 4 (2) specifies certain facts or circumstances which the Court may accept as proof of the irretrievable breakdown of a marriage, but the makes it clear that this list does not exclude any other facts or circumstances which may be indicative of the irretrievable down of the marriage. ”

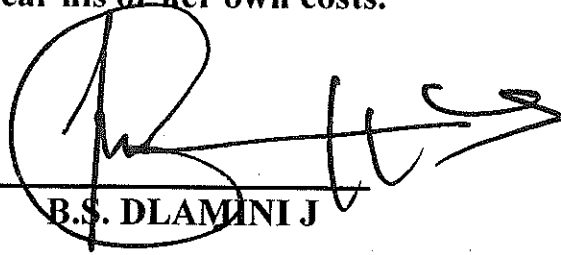
[11] In the present case, the Plaintiff relies on the alleged act of adultery attributed to the Defendant. This fact, according to the Plaintiff, has disintegrated the marriage relationship between the parties to such a point that any possibility to return to a normal relationship is impossible.

[12] On the facts of the present matter, the Plaintiff has, through the evidence presented in Court without opposition, proven a valid ground of divorce. In the circumstances, the Court grants the following orders;

(a) A final decree of divorce between the Plaintiff and the Defendant herein.

(b) The Deed of Settlement dated 13th April 2022 in relation to the distribution of the parties' joint estate is made an Order of Court.

(c) Each party to bear his or her own costs.



B.S. DLAMINI J

HIGH COURT OF ESWATINI

For Plaintiff: *Mr. B.G Mdluli (Bongani G. Mdluli & Associates)*

For Defendant: *No appearance*