

IN THE HIGH COURT OF SWAZILAND

BETTY SHIBA

vs

RICHARD SHONGWE

Civ. Case No. 1760

Coram S.W. SAPIRE

JUDGMENT

(23/7/97)

The plaintiff issued summons in 1996. The summons were served on the 29th of July 1996. The defendant does not appear to have given notice of intention to defend. The matter came before the Court originally on the 23rd August, 1996 and it was postponed to a date to be arranged. In February 1997 it was removed from the role and again came before me on the 7th of May 1997.

The Plaintiff alleges that she has had 4 children by the defendant whose names and dates of birth are set out in paragraph 3 of the particulars of claim.

The children were bom before any marriage whether by Civil Law or in accordance with Swazi Law and custom was solemnised. After the birth of the youngest child the defended purported to marry the plaintiff by Swazi Law and Custom. He caused the plaintiff to be smeared

a/Betty

2

with red ochre but the allegation is that no Lobola has been paid.

The parties leaved together until July 1995 when the defendant chased the plaintiff from his house at Mhlambanyatsi. Plaintiff sought and obtained alternative accommodation from a different section of Mhlambanyatsi.

Although the defendant chased the plaintiff away he has kept 3 of the minor children with him.

The defendant is leaving with another woman and has a child by her.

The plaintiff complains that the defendant refuses the plaintiff any visitation of the children. The children she says are subject to hardships and from time to time are assaulted by the woman with whom the defendant stays. There is a confirmed suggestion that the eight year old daughter is sexually abused. For these reasons the plaintiff's case is that it would be in the best interest of the minor children if they were placed in her custody.

On these facts it would appear that it is the plaintiff and not the defendant who has the right of custody of the children both at common law and Swazi Law and Custom. The provisions of the letter have not been proved in this case and applying the common law the plaintiff is entitled to succeed in her claim for custody of all the four minor children.

The plaintiff earns a salary of E450.00 a month. The defendant on the other hand earns not less than E300.00 per week. Clearly the defendant has a duty to contribute towards the maintenance of the children. In this regard the plaintiff has claimed an amount of E150,00 per week. The amount claimed by the plaintiff seems a little in excess when having regard to what appears to be the defendant's other commitments. In the premises, the following order is made:

1. The of all four minor children born to plaintiff of which the defendant is father is awarded to the plaintiff.
2. The defendant is to pay an amount of E400.00 per month as maintenance for the same children.
3. The defendant is to pay the costs of this action

S.W. SAPIRE

ACTING CHIEF JUSTICE