



## IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 515/2010

In the matter between:

**NOMBULELO DLAMINI (Born Bhembe)**

**PLAINTIFF**

and

**SICELO FREEDOM DLAMINI**

**DEFENDANT**

Neutral Citation : Nombulelo Dlamini (Born Bhembe) vs Sicelo Freedom  
Dlamini (515/10) [2017] SZHC 207 (27 OCTOBER  
2017)

Coram : MABUZA – PJ

Heard : 11/10/2016; 2/3/2017.

Delivered : 27 OCTOBER 2017

## SUMMARY

**Customary Law – Swazi customary marriage – Dissolution of customary marriage – Requirements for dissolution not proved – Action dismissed with costs.**

## **JUDGMENT**

### **MABUZA -PJ**

- [1] The Plaintiff is Nombulelo Dlamini (Born Bhembe), an adult married woman of Mangcongco Area in the district of Manzini.
- [2] The Defendant is Sicelo Freedom Dlamini, an adult male Swazi of Ezulwini Area in the District of Hhohho.
- [3] The Plaintiff and Defendant were married in terms of Swazi law and custom at Esitjeni on the 21<sup>st</sup> at Esitjeni on the 21<sup>st</sup> September 2001. They have no children.
- [4] The marriage certificate shows that she was smeared with red ochre by Gogo Sonengani Khumalo and that seven head of cattle were paid as lobola for her. From the oral evidence adduced by the Plaintiff it appeared that the

marriage was not happy and ultimately broke down during 2008. She issued summons:

- (a) Seeking a declaratory order that the marriage between them was dissolved on the 10<sup>th</sup> February 2010 at Esitjeni.
- (b) Costs in the event of opposition.
- (c) Further and or alternative relief.

[5] The defendant defended the matter praying that the summons be dismissed with costs.

[6] In her summons the Plaintiff stated that on or about the 10<sup>th</sup> February 2008, the Plaintiff and Defendant and their respective families met at Esitjeni Umphakatsi with the Inner Council (Bandlancane) and it was resolved that the marriage between the parties be dissolved.

[7] In his plea the Defendant denied that such meeting ever took place. He denied that any resolution was taken to dissolve the said marriage.

- [8] The Defendant's plea is dated 14<sup>th</sup> June 2011. In it he further states that up until 14<sup>th</sup> June 2011, he has maintained a normal marriage relationship with the Plaintiff including enjoyment of conjugal rights.
- [9] The parties led oral evidence about the alleged meeting dissolving their marriage on the 10<sup>th</sup> February 2010.
- [10] The Plaintiff testified that after her marriage to the Defendant and after leaving college they lived together at Siteki where they were allocated a police house.
- [11] She says that they lived there for five years and that their marital problems started during this time.
- [12] She stated that he used to insult her and assault her. He used to accuse her of being unfaithful. He continually had girlfriends and would leave home for them. When he returned he would assault her.
- [13] She said that the assault continued for the better part of the five years and when she used to report the matter he would assault her for reporting it.

[14] She says that she reported the matter at her parental home and they took her to his home at Buka in order to report the assault to his people. She was taken by her uncles Benson Bhembe and Shadrack Dube.

[15] Upon arrival there, they found his mother Frieda Msibi and they reported to her that the Defendant continuously assaulted the Plaintiff. The Defendant was not present and his mother telephoned him and advised him of their presence and their mission. Thereafter she assured the Plaintiff's family that she would admonish him. The Plaintiff says that she had reported the assaults previously but his family had done nothing about them.

[16] She says that when she returned home he assaulted her for reporting the matter to his mother accusing her of bothering his mother who was sickly and a diabetic.

[17] She says that due to the assault, she did not go to work. His mother and the Defendant went to her home to engage her family in further talks as he was constantly ill-treating her. After the talks the Defendant promised to refrain

from assaulting the Plaintiff. She says that he also had a tendency of pointing his service pistol at her.

[18] After the family talks, the Defendant promised to stop assaulting her and the couple were cautioned to go back and live in peace. The peace was shortlisted because the Defendant continued to assault her.

[19] She says that she had reported the assault to her superiors at work and had applied to be transferred but nothing happened. However, she continued to report the abuse to her family.

[20] She and the Defendant were later transferred to Mankayane police station. Her uncles Benson and Shadrack came to Mankayane upon receipts of the complaints from her about the Defendant's continuous abuse. When her uncles arrived at Mankayane they engaged the couple in talks but these were not successful.

[21] Later, her family sent her brother Sifiso Bhembe to request a meeting of the two family. He was given the date 10<sup>th</sup> February 2008 for the two families to meet about their constant marital problems.

[22] The two families met at the Umphakatsi at Esitjeni which is the Defendant's main family home and where the couple were married. Present from her family was herself, Benson, Sifiso Bhembe her aunt and her two sisters. On his side of the family was the Defendant, Kate Dlamini (his aunt), Sibahle Dlamini (his mother) and Inkhosikati make laMtsetfwa. The latter chaired the meeting.

[23] The families deliberated on the issue. The Plaintiff explained to the meeting that because of the constant abuse, she could no longer live with the Defendant.

[24] She further stated that the Inkhosikati concluded the meeting by issuing a ruling that the couple could dissolve the marriage as they had failed to live together in peace.

[25] The Plaintiff stated that everyone at the meeting accepted the ruling except for the Defendant who refused to accept it saying that he wanted to continue living with the Defendant.

[26] At the time of this meeting the Plaintiff had been transferred to Siphofaneni while the Defendant remained at Mankayane.

[27] It was put to her by her Counsel that the Defendant in his plea stated that the couple continued to enjoy conjugal rights. She denied this. She stated that during 2008 and shortly after the family meeting at Esitjeni, the Defendant visited her at Siphofaneni where he spent the night but nothing sexual took place between them. She stated that this was the last time that he visited her and that they had lived apart since 2008. Hence the current proceedings that this Court declare that her marriage to the Defendant is dissolved and to award her costs of suit.

[28] The Plaintiff was cross-examined by the Defendant's counsel. Cross-examination revealed that she began her career under general duty but later on under the domestic violence unit where she ultimately became well versed in issues of domestic violence and how they were resolved.

[29] She was asked if she had ever laid criminal charges of assault against the Defendant. She replied that she had not done so because she was afraid that



he would assault her as he had assaulted her each time she reported the assaults to her family.

[30] It was put to her that the Defendant denied ever assaulting her. She denied this and recalled another instance where he had assaulted her in the presence of her younger sister who had visited her.

[31] It was put to her that she never went to any hospital for medical treatment nor reported the assaults to the police because they did not happen.

[32] She responded that she went to the hospital after he beat her up before they went to e Buka. The Defendant accompanied her to the hospital. She did not report the matter to the police because he threatened to kill her if she did.

[33] Asked why she continued to stay with him during the five years in Siteki, she replied that she asked for a transfer but was advised that this was not possible as they were husband and wife.

[34] It was put to her that proof that the Defendant never assaulted her was that he was never hauled before his superiors about the assaults on her.

[35] She responded that they did not rebuke him in any way but the reason she gave for applying for a transfer was the assaults on her.

[36] When the transfer was finally approved, he wrote a letter interdicting her transfer and it was through the assistance of her lawyers that she was successful in her application for transfer.

[37] It was put to her that the Defendant and his mother never went to Mangcongco (her parental home) to talk about the assaults on her. She responded that such a meeting did take place.

[38] It was put to her that the Inkhosikati did not direct that their marriage be dissolved because the Plaintiff never reported any assaults at the meeting at Esitjeni, and that the Plaintiff only complained about the Defendant being a womanizer. She denied all of this.

[39] Certain questions were put to her by the Court and she responded that she had lived alone since 2008 and that she was happy living alone. She

informed the Court that the Defendant had subsequently married a woman by the surname of Tsela.

[40] When she was re-examined as to what would have been the consequence of her laying charges against the Defendant, she replied that had he been convicted he would have lost his job. On another note she stated that he was powerful in the police service because of his rank of inspector and she a junior sergeant. Asked if he had reported her desertion since 2008 to her family, she said he had not done so. Thereafter the Plaintiff closed her case.

[41] The Defendant next led evidence. He testified that after their marriage they lived at his home at eBuka. He resided at Siteki for work purposes. At the time of their marriage she was not employed and lived at eBuka where she stayed for a full year before she was recruited into the police service. Thereafter she joined him at Siteki and the marriage was fine for the next five years contrary to her evidence that it was not.

[42] From Siteki they were transferred to Mankayane where they lived for one year until 2008. Even while there he says that the marriage was fine.

During February 2008, they took leave which they spent at eBuka. While there, the Plaintiff asked to visit her parental home and he agreed.

[43] While she was away, he received a call from his colleagues at Mankayane that she was packing beds and other household items and she moved to Siphofaneni while he remained in Mankayane.

[44] He stated that she did not inform him that she had been transferred nor did they advise him at work about her transfer. As far as he was concerned their marriage was fine.

[45] He tried to call her when he heard that she was packing but she had switched off her phone. On his last day of leave he proceeded to Siphofaneni where he spent the night. They talked and she informed him that she had been transferred. These news shocked him because under normal circumstances for married couples who reside together the other partner is consulted before any transfer.

[46] When he resumed duty after his leave he spoke to the Station Commander at Mankayane about the surprise transfer and the station commander assured

him that it was a genuine transfer because the Plaintiff was under a specialized unit and the transfer would open opportunities for her and he let the matter rest.

[47] He testified that immediately after the transfer there was a family meeting at eSitjeni on the 10<sup>th</sup> February 2008 at Umphakatsi. The meeting was convened at the instance of the Plaintiff's family. He confirmed that the members that she had mentioned attended the meeting.

[48] As he and his family did not know what the meeting was about, the Plaintiff was asked speak first. According to him, she state three things. Firstly, that she was forced into the marriage and that she was raped; secondly, that the Defendant was a womanizer;; thirldly, that the Defendant usually assaulted her.

[49] He says that it was her family who responded to her complaints. Her brother, Sifiso stated that after she was tekaed and had been brought home, she insisted that her family return her to her marital home immediately. They had intended returning her after a month as she had been married into the royal family. Her family took her back in two mini buses.

[50] The Defendant says that he too echoed what Sifiso had said by reminding her that when they were dating he used to take her to eBuka and she was tekaed at eSitjeni but she never complained.

[51] With regard to the allegation that he was a womanizer, he responded at the meeting that that was not correct and dared to have any woman that he was associated with but she failed to do so.

[52] With regard to the allegation of assaulting her, his response at the meeting was that from the time he had fallen in love with her he had never assaulted her. He says that he asked her why she had never laid a criminal charge against him particularly because she was part of the domestic violence unit and taught people how to handle such matters. He also queried her as to whether she had gone to hospital after the alleged assaults. He said that she responded that she had not laid any criminal charges or had been to hospital.

[53] He says that he gave her the greenlight to lay criminal charges against him if he ever assaulted her because he hated men who assaulted women.

[54] He further stated that there was no resolution reached at the meeting as they failed any resolution. He says that the Plaintiff walked out of the meeting saying that as she was not getting any help she would get help some other way.

[55] He denied that make LaMtsetfwa had pronounced that the marriage had been dissolved. He further denied that any meeting took place at eBuka and Mankayane. He denied ever assaulting her at Siteki and Mankayane. He further denied eve pointing a gun at her.

[56] Mr. Mabila cross-examined him. It was put to the Defendant that Shede Dube of Bandlancane was present at the meeting of 10<sup>th</sup> February 2008. He replied that he did not know Mr. Dube and if he was present he was not introduced to the Defendant or his family.

[57] It was put to him that telling the Court that the Plaintiff abruptly left the meeting was an afterthought or fabrication but he denied this.

[58] It was put to him that he knew about the Plaintiff's transfer to Siphofaneni because he brought a police report challenging the application for transfer.

He replied that the report was ineffective because she was already transferred.

[59] It was put to him that the Plaintiff sought the transfer because of his constant assaults but he disputed this and denied ever assaulting her.

[60] It was put to him that the meeting of the 10<sup>th</sup> February 2008 a resolution taken

as per ruling of Inkhosikati that the marriage be expunged and that everyone present concurred with the ruling except the Defendant. He denied that there was any ruling or resolution.

[61] It was put to him that there was no intimacy between him and the Plaintiff at Siphofaneni when he visited. He denied this and stated that they had sex.

[62] It was put to him that his family never went to her family to find out what had happened to her according to Swazi Law and Custom and this was because they were abiding by the resolution taken at the meeting of the 10<sup>th</sup> February 2008. He agreed that they never went after her because according



to Swazi Law and Custom they go after a wife that has deserted and the Plaintiff had not deserted.

[63] It was put to him that even after they received her summons the Dlamini family never called her to enquire what it was all about. His response was that a decision was taken by the family that they should not disturb the Court process that she had started.

[64] He was asked if it was not desertion that she stayed at Siphofaneni without his permission or knowledge. His response was that it would be desertion if it was not work related.

[65] Luzamo Dlamini (DW2) next gave evidence. He stated that the Defendant was his brother's son. He testified that he knew the Plaintiff. That he was present at the meeting of the 10<sup>th</sup> February 2008 where the Plaintiff informed the meeting that she could no longer continue to live with the Defendant because he was continuously assaulting her and that too many women fell in love with the Defendant and that the Defendant raped her when he tekaed her.

[66] He further testified that as a family they had difficulty in believing that she was raped because after she was tekaed and taken home, her family brought her back to the Dlamini homestead earlier than was normally expected.

[67] He stated that there was no resolution taken that the marriage was dissolved and could be expunged from the marriage register. He stated that the only conclusion he recalled was that the couple were advised that all marriages have problems and they should forgive one another. He said that as this was the first time that the matter was heard they could not resolve that the matter be dissolved.

[68] He stated that Bandlancane was not present at the meeting.

[69] When he was cross-examined he revealed that the Defendant had later informed them that the Plaintiff had moved out from where they were staying together with the Defendant. And that the Dlamini family did not summon her to enquire as to what had happened.

[70] It was put to him that as it was nine (9) years since she had left had the family sent people to find out what happened in terms of Swazi culture. His

response was that they had looked for her but she had rejected them on the 10<sup>th</sup> February 2008 in the presence of her family.

[71] It was put to him that there were two earlier meetings to that of the 10<sup>th</sup> February 2008 but he denied any knowledge of these meetings. After the evidence of DW2, the Defendant closed his case.

[72] It has now been accepted in our jurisdiction that in order to obtain the relief that the Plaintiff seeks namely an order declaring the marriage in terms of Swazi Law and Custom between the parties dissolved, there are certain procedural steps that have to be taken by their respective families. And these include but are not limited to:

- (a) A meeting of the respective families including the married couple and a resolution that the families have agreed to the dissolution of the marriage be taken. Such resolution or minutes signed by appropriate persons to be filed with the Court.
- (b) Evidence whether oral or by affidavit be led by the married parties.
- (c) A report from the groom's Umphakatsi that such resolution has been reported to it.

(d) A report from the bride's Umphakatsi that such resolution has been reported to it.

[73] In *casu* Plaintiff based the cause of action on a resolution ostensibly taken by Make laMtsetfwa on the 10<sup>th</sup> February 2008 after a meeting of their respective families. However, she did not file the resolution or any minutes of the alleged meeting.

[74] She did not call Make laMtsetfwa or other persons who attended the meeting (including members of her family) to corroborate her evidence that such a resolution had been taken.

[75] The Defendant denied that Make laMtsetfwa pronounced that the marriage had been dissolved at the meeting of the 10<sup>th</sup> February 2008.

[76] The Defendant was corroborated by Luzamo Dlamini (DW2) who had also attended the meeting of the 10<sup>th</sup> February 2008. DW2 stated that no resolution dissolving the marriage was taken at that meeting and neither did Make laMtsetfwa issue a resolution.

[77] As indicated the Plaintiff led evidence that such a resolution was taken. There was no corroboration to her evidence. The Defendant in his evidence denied that such a resolution was taken. DW2 corroborated the Defendant.

[78] There was no evidence led by the groom's Umphakatsi as well as the bride's Umphakatsi that a report of such dissolution was indeed reported to their respective imiphakatsi.

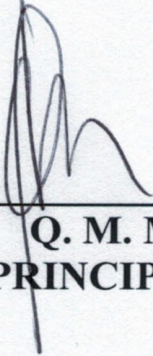
[79] Consequently there is no evidence before me that a resolution was taken that the marriage be dissolved.

[80] The Plaintiff led evidence that her marriage was unhappy and that the Defendant used to abuse her by assaulting her. He denied her accusations. Under a civil rights marriage the evidence that she led would ground a cause of action for restitution of conjugal rights followed by a decree of divorce if it be proved that the Defendant failed to restore conjugal rights or that in restoring conjugal rights the Plaintiff showed that his return was not genuine.

[81] Unfortunately we do not have such relief pertaining to marriages under Swazi law and custom.

[82] In the event the Plaintiff has failed to prove that there was dissolution of the marriage and I hereby dismiss the Plaintiff's action with costs.

BABANE Crim. Case



---

**Q. M. MABUZA**  
**PRINCIPAL JUDGE**

For the Plaintiff : Advocate Mabila  
For the Defendant : Mr. T. Mamba

