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REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION, OSHAKATI

JUDGMENT

Case no: I 194/2014

In the matter between:

M..... [P.....] **PLAINTIFF**

And

E..... L..... P.....] (born S.....) **DEFENDANT**

Neutral citation: *Palastus v Palastus* (I 194-2014) [2015] NAHCNLD 29 (08 July 2015)

Coram: CHEDA J

Heard: 29 June 2015

Delivered: 08 July 2015

Flynote: A party who opposes a divorce claim on religious grounds cannot succeed under Namibia law. Namibian marriages are not bound by Heavenly covenants and/or laws which cannot be verified by human beings. The court will deal with earthly matters which are governed by earthly laws.

Summary: Plaintiff issued out divorce summons which was opposed by defendant on the basis that God had joined their marriage in Heaven, therefore, no man should separate them. God deals with Heavenly matters while these courts deal with earthly matters. Divorce was granted by the court being an earthly court and therefore a court of human beings thereby leaving Heavenly matters to the Almighty.

ORDER

1. Final order granted as per divorce order filed of record.
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JUDGMENT

CHEIDA J:

[1] Plaintiff sued defendant for divorce and other ancillary relief. On the 14 January 2015 defendant entered an appearance to defend. The matter progressed until it was referred to a court-connected mediation as per the Rules of this court. The parties reached a verbal agreement which was then reduced into writing for the sake of the procedure. This agreement was with the assistance of their Legal Practitioners.

[2] Plaintiff signed, but, defendant changed her mind and refused to append her signature thereto.

[3] The matter was set down on the motion court roll. On the day of the hearing defendant's legal practitioner, Ms. Amupolo advised the court that the parties had reached an agreement which was signed by plaintiff and all the relevant witnesses save for the defendant who refused to sign for reasons which she considered invalid and to cover herself had advised her to attend court.

[4] The court carried out an enquiry as to why she did not want to sign the agreement of which the terms and conditions of which she had agreed to. Her response was that she was not prepared to sign the said agreement as according to her religion, that, which was put together by God should not be separated by man. This of course is what the Bible says.

[5] In our law a verbal agreement is as good as a written one as long as it is shown that the parties were willing to contract and yet desire or require a written record and assuming that there is no legal rule requiring execution in writing. There is, therefore a contract as soon as the parties reach agreement orally, see *Man v Grant* 1966 (4) SA 38.

[6] An oral agreement which has all the necessary ingredients of a legal contract and has no new terms or conditions added at the time of signing is binding on both parties, see
N C Williams v First Consolidated Holdings 1982 (2) SA 1.

[7] In *casu* the settlement agreement has the following preamble:

“Settlement Agreement, whereas: the plaintiff instituted an action against the Defendant in the above matter in the above Honourable Court. And whereas: The Defendant defended the said action. And Whereas: The Plaintiff and the Defendant is desirous of settling this matter on certain terms and conditions as set out herein. Now therefore it is agreed that:

1. Continuation of the action:

1.1 The Plaintiff shall proceed with the action unopposed by the Defendant and seek a final order of divorce and shall, subject to the approval of the above Honourable Court, incorporate the terms of this agreement in such order if the High Court of Namibia so obliges.

1.2 It is recorded that the Defendant is not desirous of restoring conjugal rights to the Plaintiff.” (my emphasis)

[8] Defendant is not alleging any alteration of the settlement agreement or neither does she deny that there was such a verbal agreement which was reached after

protracted negotiations. In my mind, therefore, it is an unavoidable conclusion that the object of a written agreement was to facilitate proof of the verbal agreement, see *Goldblatt v Fremantle* 1920 AD 123 at 128-129 where Innes CJ stated:

“[I]f during negotiations mention is made of a written contract, the court will assume that the object was merely to afford facility of proof of the verbal agreement, unless it is clear that the parties intended that the writing should embody the contract. (Grotius 3.14.26 etc.)... where the parties are shown to have been *ad idem* as to the material conditions of the contract, the onus of proving an agreement that legal validity should be postponed with the due execution of a written document, has upon the party who alleges it.”

[9] It was not submitted by the parties, let alone the defendant herself that the verbal agreement was to become effective after it had been reduced into writing. Defendant only reason is that her marriage was contracted in Heaven. This is not a legal reason but a religions one.

[10] In as much as she fervently believes in piety of this matter, the fact still remains that for all intents and purposes her marriage is still regulated and governed by the laws of this earth in general and Namibia in particular. It is for that reason that the laws of the country to which she is also subjected to, require that earthly matters should be dealt with according to earthly laws.

[11] In as much as I understand defendant’s strong views about her marriage, I find no lawful impediment to prevent plaintiff from obtaining his relief. Defendant’s reason is not legally recognisable by this jurisdiction. This court being an earthly court and charged with the duty of interpreting and enforcing the laws of this country has no alternative, but, to dissolve this earthly marriage and if there is any other in Heaven, this court has no effective way of dealing with it as it become a pious matter. Matters of piety are the domain of the Almighty and they should be left for Judgment day.

[12] Defendant cannot and should not be allowed to frustrate Plaintiff on the basis of religious reasons. It is for that reason that I granted the order.

[13] In the result the following order is made;

1. Final order granted as per divorce order filed of record.

M Cheda
Judge

APPEARANCES

PLAINTIFF: I. Mainga
Of Inonge Mainga Attorneys, Ongwediva

DEFENDANT: M. Amupolo
Of the Directorate of Legal-Aid, Oshakati