

**Muyambo v Bere (HC 1010/05) [2007] ZWHHC 30; HH 30-2007 (16 March 2007)
(Zimbabwe, High Court)**

Summary of the Facts

The Plaintiff, Mrs. Pauline Muyambo, married her husband, Mr. Godwin Muyambo, on February 23, 2000. The marriage was valid, as it was solemnized in accordance with the Marriage Act [Chapter 5:11]. About three years after their marriage, the plaintiff saw her husband on several occasions waiting by their front gate and then getting into a car with a woman, Ms. Eunice Bere, the Defendant. Under the Marriage Act, adultery or polygamy were not allowed. When the Plaintiff asked her husband about his relationship with the Defendant, he described the relationship without admitting his romantic affair. However, after finding a message from the Defendant meant for her husband, the Plaintiff confirmed her suspicions of an affair between her husband and the Defendant.

The Plaintiff contacted the Defendant and clearly explained to her that she had a valid marriage with Mr. Muyambo. The Plaintiff later confronted the Defendant at Mr. Muyambo's workplace and assaulted her. After this incident, Mr. Muyambo continued the affair with the Defendant and finally moved in with her. The Plaintiff sued the Defendant for compensation for the emotional damage she had suffered as a result of the adulterous relationship between the Defendant and Mr. Muyambo. The Defendant argued that she did not know that Mr. Muyambo was married, and had married Mr. Muyambo under customary law.

Issue

Whether the customary marriage with the Defendant was valid, or whether the relationship between the Defendant and Mr. Muyambo was adulterous.

Summary of the High Court's Discussion

The Plaintiff had confronted the Defendant several times and explained to her about the marriage to Mr. Muyambo. Therefore, the Defendant's argument of lack of awareness of the marriage was without merit. From the behavior of the Plaintiff and Mr. Muyambo, the Defendant could easily learn of the existence of their marriage. Since the marriage between the Plaintiff and Mr. Muyambo existed at the time the Defendant claimed to have married Mr. Muyambo, the second marriage was invalid.

Conclusion

The Defendant's love affair with Mr. Muyambo amounted to adultery and she should pay the Plaintiff \$1,500,000-00 compensation.

Commentary

The High Court correctly addressed the relevant issues in the case, namely the Defendant's awareness of the existing marriage between the Plaintiff and Mr. Muyambo, and the invalidity of the customary marriage between the Defendant and Mr. Muyambo. Unlike Zimbabwean marriages concluded under Customary Marriages Act [Chapter 5:07] which allow polygamy, marriages concluded under the Marriages Act [Chapter 5:11] do not allow adultery or second marriage without dissolving the first marriage.

This ruling may be useful to advocates in African countries where both monogamous and polygamous forms of marriage can be legally solemnized.

Case summary and commentary by Kibrom Isaak-Teklehaimanot