

IN THE SUBORDINATE COURT OF

2017/CRMP/MO/007

THE FIRST CLASS FOR THE LUSAKA

DISTRICT HOLDEN AT LUSAKA

(Civil Jurisdiction)

**IN THE MATTER OF THE AFFILIATION AND MAINTENANCE OF CHILDREN
ACT CAP 64 OF THE LAWS OF ZAMBIA**

AND

**IN THE MATTER OF SECTION 7 OF THE AFFILIATION AND MAINTENANCE
OF CHILDREN ACT CAP 64 OF THE LAWS OF ZAMBIA**

BEFORE MAGISTRATE MR. BRIAN. M. SIMACHELA

BETWEEN

MARY PHIRI (suing on behalf of Emmanuel Chansa **APPLICANT**
as mother and next friend)

AND

ENERST CHANSA **RESPONDENT**

For The Applicant : Ms Chipso Chilima from Legal Aid Clinic for Women.

For The Respondent : In Person

JUDGMENT

This is a civil matter having come by way of a complaint. The complaint is filed by way of summons supported by an affidavit. The Applicant alleges that the Respondent does not financially maintain the child since he was born. The counsel for the Applicant informed the court that she will rely on the affidavit filed.



REVIEW OF THE EVIDENCE OF THE APPLICANT

PW1, Mary Phiri an office orderly in the judiciary of Zambia stated in her affidavit that between 2000 and 2001, she was in a sexual relationship with the Respondent. That out of that relationship a male child by the name of Emmanuel Chansa was born on the 18th of August, 2002. The affidavit further stated that the respondent did not dispute the paternity of the child, but he has never supported the child since his birth until June 2016, when he took a **K1500.00** for his school fees. She stated that her monthly income is **K1300.00** since she is servicing a loan and her total monthly expenses amounts to **K1900.00**. She averred that the boy is at Canisius Secondary school and she pays **K2, 600.00** for his school fees and **K1, 100.00** for his transport and pocket money per term. She asked the court to order the respondent to contribute **K2, 000.00** for their child's school fees per term and a **K1, 000.00** per month for food.

In cross-examination by the respondent, Mary maintained that the respondent gave her **K2000.00** in term two (2) of 2016, another **K400.00** in term three (3) of 2016 and a **K200.00** this year 2017.

REVIEW OF DEFENCE

DW1, Enerst Chansa a bus driver stated that he did not dispute paternity of the child but argued that he sponsored the child's birth days during the period lived with the sister to the Applicant. He averred that problems started when the Applicant decided to take the child to a very expensive school leaving Matero boys where the boy was selected. He stated that at matero boys the fees are **K1, 250.00** per annum but at Canisius they charge **K2, 600.00** per term which he could not afford. He stated that in 2016, he paid a total of **K2, 900.00** towards the child's maintenance.



In cross-examination, the respondent stated that he was a driver who got a salary of **K1200.00** per month. He testified that if the child was taken to Matero boy's secondary school, he could have been paying for his school fees. He further stated that he could manage to contribute **K1, 250.00** per year in school fees and another **K500.00** per term for transport and upkeep.

In Re-examination the respondent stated that he could not afford the schools fees for the child which are so expensive. He further averred that he has tried to reason with the Applicant to bring the child back to Matero boys' secondary school but she has refused.

This was the evidence in defence. The defendant sought to show that he has been supporting his child. He argued that he was willing to be supporting his child as long as the boy was taken to matero boys' secondary school as opposed to Canisius sec school.

FINDINGS OF FACT

The two main questions to be resolved in this matter are:

1. Whether the Respondent has been financially supporting his child or not; and
2. Whether the Respondent can afford to pay schools of **K2, 000.00** per term for his child and provide **K1000.00** every month for food.

It is not in dispute that the respondent is the biological father of Emmanuel Chansa, a boy aged 15 years old. It is not in dispute that the respondent pledges to support his son by paying his school fees of **K1, 250.00** per annum and contribute **K500.00** for his transport and food per term. It is not in dispute that the Applicant is in a stable employment earning a net income of **K2, 900.00** and the Respondent earns **K1,200.00** per month.

FACTS IN DISPUTE



However, it was in dispute as to how much the respondent has contributed to the upbringing and school fees of the child in question. The Respondent testified that he contributed some monies through the Applicant's sister. The Applicant told the Court that she has been financially supporting the child and the Respondent only contributed a total of **K2, 900.00**.

Therefore, on a balance of probability, I find that the Respondent has not been supporting his child consistently. I accept that the Applicant is the one who has been living with and supporting the child regularly. However, I also find that the Respondent is willing to support his child regularly if certain parameters were set according to his wishes.

Having found that there was no dispute regarding the paternity of the child by the Respondent and that he is willing to support him, I must find that the said child can be a subject of maintenance. It must be put into reality that the responsibility of raising a child lies in the hands of both parents regardless of their difference in income levels.

I now turn to the holding.

Section 7 of the Affiliation and Maintenance of children Act Cap 64 states that; The court may, either at the time of making an affiliation order or upon subsequent application for a maintenance order, make a maintenance order in respect of the child concerned.

In this circumstance, it is ordered as follows;

ORDERS



1. The Respondent shall be contributing **K1600.00** towards school fees per term and a further **K500.00** for transport and food;
2. It is further ordered that the Applicant shall be contributing **K1000.00** towards school fees per term.
3. The orders are subject to change depending on market forces and upon either party' application.
4. Costs of this action shall be borne by individual parties.

DELIVERED IN OPEN COURT THIS 7TH DAY OF JUNE 2017



HON. BRIAN. M. SIMACHELA (Mr)

MAGISTRATE CLASS III