



CASE NO A 4196/2011

IN THE HIGH COURT OF NAMIBIA

In the matter between

KARLL- HEINZ OOSTHUIZEN

PLAINTIFF

AND

NANCY OOSTHUIZEN-GRAF

DEFENDANT

Heard on: 26 MARCH 2012

Delivered: 28 JUNE 2012

UEITELE A J [1] On 18 November 2011 the plaintiff was granted leave to institute action by way of edictal citation, but the Court Order that was on the Court file amongst others read as follows:

“Having heard Ms *VON KNOUW*, Counsel for the Applicant and heaving read the Notice of Motion and other documents filed of record:

- 1 1.1 An order to restore conjugal rights to the Plaintiff and failing compliance therewith;
- 1.2 a final order of divorce.

- 2 Division of joint estate;
- 3 Costs of suite only in the vent of the action being defended;
- 4 Further and alternative relief.”

[2] On 12 March 2012 the plaintiff's legal practitioners set the matter down for hearing on the unopposed motion roll of 26 March 2012.

[3] On the 26 March 2012 the matter was called before me for purposes of leading evidence in respect of an application for restitution of conjugal rights. I asked Ms Von Kunow who appeared for the plaintiff as to whether the plaintiff had leave to institute action outside Namibia. My question was motivated by the fact that the Court Order (of 18 November 2011) that was before me on the Court file did not indicate that the plaintiff was granted leave to institute action against the defendant by way of edictal citation it only read as I have quoted it above here in paragraph 1 of this order.

[4] Ms Von Kunow then indicated to me that she was in Court personally on 18 November 2011 and she can recall that the Court Order of that day (i.e. 18 November 2011) granted the plaintiff leave to sue the defendant by means of edictal citation and that the service of the edictal citation and any other process of the court must be served upon the respondent (defendant) personally at No. 23 Travenstrasse, 53332 Bornheim, Federal Republic of Germany. (She unfortunately did not have a copy of the correct Court Order at hand so the only Order that was at hand was the Order that I referred to in paragraph 1 above.

[5] I therefore postponed the matter to the 16th of April 2012 to enable the plaintiff to have the Court Order of 18 November 2011 corrected so that it reflects what this Court ordered on 18 November 2011. When the matter was called on 16 April 2012 it was again postponed to 23 April 2012 and on that day the matter was removed from the roll pending the delivery of my order.

[6] The Court Order of 18 November 2011 has now been corrected and has been placed on the Court file.

[7] In the result I make the following order.

7.1 The plaintiff be and is hereby granted leave to set the matter down for an application for restitution of conjugal rights

UEITELE, AJ

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ON BEHALF OF THE PLAINTIFF:

MS VON KUNOW

INSTRUCTED BY:

THEUNISSEN, LOUW & PARTNERS

ON BEHALF OF THE DEFENDANT

NO APPEARANCE