

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

2014/HP/D047

(Divorce Jurisdiction)



BETWEEN:

Arnold Mwila Chengo

Petitioner

And

Gracious Kafunya Kajimo Chengo

Respondent

Before the Honourable Mrs. Justice J. Z. Mulongoti
on the 2nd day of October, 2015.

For the Petitioner: In Person

**For the Respondent: Ms. M. Mtonga, National Legal Aid
Clinic for Women**

J U D G M E N T

The petition is for dissolution of the marriage between Arnold Mwila Chengo, the petitioner, and Gracious Kafunya Kajimo Chengo, the respondent. The petitioner alleges that the marriage has broken down irretrievably because the respondent has behaved in such a manner that he cannot reasonably be expected to live with her. The particulars of unreasonable behaviour, were that the

respondent left the matrimonial bedroom from September, 2013 and thus denying the petitioner his conjugal rights. The respondent is having an extra marital affair and frequently returned home late at night with no plausible explanation of her whereabouts.

For her part, the respondent filed an Answer and cross petition. She denied that she has behaved in such a manner that the petitioner cannot reasonably be expected to live with her.

The respondent further averred that she moved out of the matrimonial bedroom after she was served with the petition for divorce. She denied denying the petitioner conjugal rights and having an extra marital affair.

In her cross petition she admits that the marriage has broken down irretrievably but alleges that it is due to the fact that the petitioner has behaved in such a way that she cannot reasonably be expected to live with him. That sometime in June, 2013, she came across a message in the petitioner's phone introducing the mother of his child to his brother as his wife. When confronted, the petitioner became aggressive towards her. Additionally, that on

several occasions the petitioner has locked her outside the house and she would sleep by their neighbor's house for three days. The petitioner also tells his relatives that the respondent is a bad person resulting in enmity between herself and his relatives. The respondent also prays for dissolution of the marriage.

At the hearing on 22nd October, 2014, the petitioner informed the court that he was discontinuing with the petition and wished to reconcile with the respondent. I adjourned the matter to allow the reconciliation but it failed. The petition was discontinued and I proceeded to hear the cross petition. The petitioner filed an Answer to the cross petition. He averred that the respondent had premeditated intentions in the marriage and now that she has succeeded to get what she wanted out of the marriage she intends to end it at all costs.

Further, that the petitioner has always been aware of the mother of his child who he had before he married her. And the respondent would even pass on financial support of the child. The respondent was the one who even refused for him to bring the child under the matrimonial roof. The petitioner denied being violent and averred that the

respondent was the one who physically and violently broke several doors in the house and abused the petitioner by hitting him with a stick. This incident was even reported to victim support unit. And that she has used shared income to secretly purchase plots in Chilenje and Mt. Makulu and hiding such purchases from the petitioner. He also urged the court to order the respondent to vacate the matrimonial home because she has continued to brutalize him. And that she can maintain herself and her children as she is still in employment.

At the hearing of the cross petition, on 21st July, 2015 the respondent testified that the couple has not been sharing a bedroom from March 2014 though they live in the same house. The petitioner has his meals cooked by his son. She repeated the contents of the petition that the petitioner was violent. He shouted at her in the presence of neighbours and children. That though the violence has now stopped, the relationship is dead and they are more like housemates. That a few years into the marriage she discovered the boy the petitioner had introduced as his nephew was actually his son. And when the mother to the boy discovered he was marrying, she sued for breach of

contract of marriage. Further, that she used to send money to the woman for child support. When he stopped supporting the child, the woman started calling and fights started between them.

In cross examination, she confirmed that the parties married on 15th November, 2005. And that she agreed to marry the petitioner because they were compatible. That was the evidence on behalf of the petitioner.

The petitioner testified that he still loved and cared for the respondent and that the marriage could be saved. He further testified that the respondent knew of the relationship between himself and the mother to his child. That this is why she was entrusted to pass on money for child support. The two of them met for that purpose. He denied being violent and maintained that the respondent was the violent one. At one time she and her two daughters physically hit him. That to date there is physical violence. He denied locking her out of the matrimonial house. That the respondent returned home past 22hours and when questioned said she had to earn bread. And that she even introduced a boyfriend to her relatives in Kalulushi. She has threatened him not to see her relatives

and tears up letters he writes her. He reiterated that the respondent siphoned money from the shared income to start a chicken run business, buy cars in her name etc.

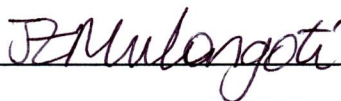
In cross examination, he testified that he retired in 2012 and marital problems started in February 2013. And the issue over his child started in 2013 after the respondent discovered that he had visited the mother to his child in Kitwe. It was also his testimony that he has never seen her boyfriend but was told she had introduced a man as her friend in Kalulushi.

That was the evidence on behalf of the petitioner.

It is common cause that the petitioner and the respondent have not shared a bedroom nor have conjugal rights since March, 2014. It is also a fact that though the parties live in the same house, they lead separate lives. They do not even share meals. The only reason they live together is because of the house which is jointly owned. I observed the parties during the hearing. I noticed that the respondent is not willing to reconcile. She said attempts at reconciliation in the past have failed. Further, that their relationship is dead. The petitioner's relatives are also

against her and there is no room for her to reconcile with them either. I am of the considered view that the marriage has broken down irretrievably and the respondent is not willing to reconcile. I find that the petitioner's behaviour in involving his family in their marital issues and also secretly visiting the mother to his child at a time when the couple was having problems to be behaviour intolerable by the respondent. I also find that there has been violence in this relationship though no one is willing to accept blame for it. Accordingly, I grant the decree nisi for the dissolution of the marriage to be made absolute within six weeks. The parties are to continue sharing the house until the issue of property adjustment is determined by the Deputy Director. Each party to bear own costs.

Delivered at Lusaka this 2nd day of October, 2015.



J.Z. MULONGOTI
HIGH COURT JUDGE