

**IN THE HIGH COURT OF ZAMBIA**  
**AT THE PRINCIPAL REGISTRY**  
**AT LUSAKA**  
**(Divorce Jurisdiction)**

**2015/HP/D.0051**

**BETWEEN:**

**AUGUSTO ANTONIO GAVINO PIREDDA**

**AND**

**MABLE MUNKANTA**



**PETITIONER**

**RESPONDENT**

**Before the Hon. Mrs. Justice A. M. Sitali on 25<sup>th</sup> June, 2015**

**For the Petitioner : Miss T. Marietta of  
Sharpe & Howard Legal Practitioners**

**For the Respondent : No appearance**

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**J U D G M E N T**

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**Legislation referred to:**

**The Matrimonial Causes Act No. 20 of 2007, sections 29 (e) and 30.**

This is a petition for nullity of marriage filed on 19<sup>th</sup> February, 2015 by the petitioner Augusto Antonio Gavino Piredda. It is presented pursuant to section 29 (e) of the Matrimonial Causes Act No. 20 of 2007. The petitioner seeks a declaration that his marriage to Mable Munkanta the respondent is null and void or in the alternative he seeks to have his marriage to the respondent dissolved.

At the trial of the action the petitioner relied on his petition and reiterated that he was lawfully married to Mable Munkanta the respondent on 3<sup>rd</sup> August, 2013, at the office of the Registrar of Marriage at the Civic Centre in Lusaka. After the celebration of the marriage and up to the date of their separation in September, 2014, the petitioner and the respondent resided at House No. 72,

Pemba Road, Chilenje South, Lusaka. He stated that he is domiciled in Zambia and is a businessman.

The respondent is a housewife and currently resides at house No. 72, Pemba Road, Chilenje South, Lusaka. There are no children of the family now living and no other child now living has been born to the respondent during the subsistence of the marriage as far as he knows.

There are and have been no previous proceedings in any court in the Republic of Zambia or elsewhere with reference to the said marriage or between the petitioner and the respondent with reference to any property of either or both of them. There are no proceedings continuing in any country outside of the Republic of Zambia which are in respect of the said marriage or which are capable of affecting its validity or substance.

The petitioner contends that at the time the marriage was contracted between the parties, the respondent was suffering from a venereal disease, namely Human Immunodeficiency Virus (HIV) in a communicable form and that he at the time of the marriage was ignorant of the respondent's HIV status.

In elaborating on his allegations against the respondent, the petitioner stated that in or about October, 2013 it was discovered to his delight that the respondent was expecting their first child. He contended that throughout her antenatal visits the respondent did not disclose to him that she was HIV positive although she was aware of her HIV status, as it was confirmed through her antenatal card. On 6<sup>th</sup> June, 2014, a child, namely Francesca Giovannina Piredda was born to the petitioner and the respondent. However, in September, 2014 the child was taken ill with pneumonia and was admitted for treatment at the Levy Mwanawasa Hospital. When the child's condition did not improve, she was transferred to Victoria Hospital.

It was at Victoria Hospital where doctors informed him that apart from being ill with pneumonia, the child was HIV positive. The doctors advised both parties to do an HIV test. The petitioner stated that he was found to be HIV negative while the respondent tested HIV positive. A CD4 count test revealed that the respondent's infection was an old infection and that she had been HIV positive prior to October, 2013. The petitioner further stated that the respondent concealed her HIV status from him although she was aware of it and that an examination of her antenatal card revealed that the HIV status was erased.

The petitioner prays that the marriage between the parties be declared null and void or that in the alternative it may be dissolved. He further prayed that each party should bear their own costs of this suit.

The respondent did not file an answer to the petition and she was not present at the trial of the petition. There is on record an affidavit of service filed on 9<sup>th</sup> April, 2015 by the petitioner which reveals that the respondent was served with the court process on 2<sup>nd</sup> April, 2015. Another affidavit of service filed on 9<sup>th</sup> June, 2015 shows that the respondent was served with the notice of hearing on 8<sup>th</sup> June, 2015. She was therefore aware of this sitting.

As the respondent did not file an answer to the petition, the petition is undefended.

I have considered the contents of the petition as well as the petitioner's oral testimony.

The petition has been presented pursuant to section 29 (e) of the Matrimonial Causes Act No. 20 of 2007. That section provides as follows:

*"29. A marriage which is celebrated after the commencement of this Act, not being a marriage that is void, shall be voidable on the grounds that –*

- (e) *at the time of the marriage the respondent was suffering from a sexually transmitted disease in a communicable form.*”

Section 30 of the said Act further provides that:

*“30. (1) The Court shall not, in proceedings instituted after the commencement of this Act, grant a decree of nullity on the ground that a marriage is voidable if the respondent satisfies the Court-*

- (a) *that the petitioner, with knowledge that it was open to the petitioner to have the marriage avoided, so conducted oneself in relation to the respondent as to lead the respondent reasonably to believe that the petitioner would not seek to do so; and*

- (b) *that it would be unjust for the respondent to grant the decree.*

(2) *Notwithstanding subsection (1), the Court shall not grant a decree of nullity under section twenty-nine on the grounds specified in paragraphs (c), (d), (e) or (f) of that section unless it is satisfied that proceedings were instituted within three years from the date of the marriage.*

(3) *Notwithstanding subsection (1) and (2), the Court shall not grant a decree of nullity under section twenty-nine on the grounds specified in paragraph (e) or (f) of that section unless it is satisfied that the petitioner was at the time of the marriage ignorant of the facts alleged.”*

A consideration of the provisions of section 30 of the Act shows that in order to succeed in proceedings brought under section 29 (e) of the Act, the petitioner must institute the proceedings within three years from the date of the marriage and must prove to the satisfaction of the court that he or she was at the time of the marriage ignorant of the fact alleged.

In the present case, the petitioner alleges that he was unaware of the respondent's HIV status at the time of the marriage and that he only learned of her HIV status after the child who was born to him and the respondent fell ill with pneumonia in September, 2014. The child was admitted to Victoria Hospital where the doctors treating the child revealed to him that not only was the child suffering from pneumonia but she was also HIV positive. A subsequent HIV test done on the respondent revealed that she was HIV positive while the petitioner tested negative for the Human Immunodeficiency Virus.

The petitioner's allegations that at the time of the marriage the respondent Mable Munkanta was suffering from a sexually transmitted disease in a communicable form, namely Human Immunodeficiency Virus and that he was ignorant of her HIV status at that time, have not been challenged by the respondent. Thus, I find that the petitioner has proved the ground for nullity of marriage under section 29 (e) of the Matrimonial Causes Act. I also find that it will not be unjust to the respondent to grant a decree of nullity of marriage. As the proceedings have been instituted within three years of the date of the marriage which took place on 3<sup>rd</sup> August, 2013, I accordingly hereby grant a decree nisi of nullity to annul the marriage. The decree nisi may be made absolute within six weeks of today's date.

The petitioner will bear his own costs of this petition.

Dated this 25<sup>th</sup> day of June, 2015.



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**A. M. SITALI**  
**JUDGE**