

IN THE HIGH COURT FOR ZAMBIA

2014/HP/D300

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(DIVORCE JURISDICTION)

BETWEEN:

REGINA KALINDE CHIZA

PETITIONER

AND

DAVIES P.T. CHIZA

RESPONDENT

Before The Honourable Mrs. Justice P.C.M. Ngulube in Chambers.

For the Petitioner: Mr. H. Kabwe, Messrs Hobday Kabwe
And Company

For the Respondent: In Person



JUDGMENT

Cases Referred to:

1. Yoyo vs. Yoyo SCZ Judgment Number 78 of 1998
2. Malama vs. Malama, Appeal Number 84 of 2000,
(unreported)
3. Katz vs. Katz (1972) 3 All ER 219
4. Birch vs. Birch (1908) W.N. 81, CA
5. Ash vs. Ash (1972) 1 ALL ER 582
6. O'Neil vs. O'Neil (1975) 3 All ER 289
7. Mahande vs. Mahande (1976) ZR 288
8. Pheasant vs. Pheasant (1971) All ER 589

On the 19th of December, 2014, the Petitioner, Regina Kalinde Chiza filed a Petition for dissolution of marriage. The Petition shows the Petitioner was lawfully married to Davies P.T. Chiza on the 12th of October, 2012 at the Registrar of Marriages' Office, Lusaka. The Petitioner and the Respondent last lived together as husband and wife at Pemba Road, Chilenje South, Lusaka. The Petitioner is a broadcaster while the Respondent is a freelance journalist.

There are no children of the family who were born during the marriage or to either party during the subsistence of the marriage.

There have been no previous proceedings continuing in any country outside Zambia in respect of the marriage which are capable of affecting its validity or subsistence. The parties have not made any arrangements for property settlement or maintenance of the Petitioner. The Petitioner contends that the marriage has broken down irretrievably because the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him.

The Petitioner set out the particulars of the unreasonable behaviour in the following terms:

On or about July, 2013, the Respondent, whilst in the company of his female companion Ethel threw food that the Petitioner had prepared for him for lunch, alleging that the Petitioner intended to kill him since the fish which was served had too many bones. He scolded the Petitioner and left the matrimonial home for an unknown destination for over one week. The Petitioner states that the Respondent only returned home after he was involved in a road traffic accident but he did not render any apology to the Petitioner nor did he explain his whereabouts for the days when he was away from home.

In August, 2013, the Respondent beat up the Petitioner violently because she asked him to explain the origins of some inappropriate text messages that the Petitioner found on his phone. In October, 2013, the Respondent left home at about 0400 hours and was picked up by a woman. He returned home at about 2300 hours and upon being questioned about his whereabouts he beat up the Petitioner and maimed her by biting her. He packed his clothes and left the matrimonial home for an unknown destination.

In December, 2013, the respondent resurfaced at the Petitioner's new home in Kalomo Road, Chilenje and when he was asked to undergo counselling for purposes of reconciliation, he left the matrimonial home for an unknown destination. The Petitioner therefore, prays that the marriage be dissolved and that each party bears its costs of the action.

At the hearing of the matter, the Petitioner, Regina Kalinde, aged 38 years, of Woodlands Extension Lusaka, a broadcaster, gave sworn evidence that on the 12th of October, 2012, she got married to the Respondent at the Civic Centre, Lusaka. Thereafter the parties were given a Marriage Certificate. She was shown a document which she identified as the Marriage Certificate that the parties were given after the marriage was celebrated on 12th October, 2012. She showed the court the identifying features such as the names of the parties and those of their witnesses. The Marriage Certificate was marked IDI for purposes of identification. It was subsequently admitted into evidence and marked exhibit P1.

The Petitioner stated that they last lived together as husband and wife at Kalomo Road, Chilenje. The Petitioner and the

Respondent are now living apart as the Petitioner lives in Woodlands while the Respondent lives in Makeni.

There are no children that were born to the parties during the marriage. No proceedings were commenced anywhere either in Zambia or outside the country which are in respect of the marriage and are capable of affecting its validity or subsistence.

The Petitioner states that the marriage has broken down irretrievably due to the Respondent's unreasonable behaviour.

The Petitioner gave the particulars of unreasonable behaviour stating that the Respondent would return home and scream at the Petitioner and throw the food that would be served to him.

On one occasion, the Respondent took a woman's car to the matrimonial home and parked it there. The owner of the car went to the matrimonial home and picked up the Respondent at 0500 hours, and they went away to an unknown destination.

On another occasion, he threw food that was served and left the matrimonial home for one week. The Petitioner decided to arrange for counselling sessions to save the marriage and he was agreeable. However, when the counselling sessions were due, the Respondent refused to go there and left the matrimonial home.

The parties have not lived together as husband and wife since December, 2013.

The Petitioner therefore prayed that the marriage be dissolved on grounds that it has broken down irretrievably. The Petitioner was not cross-examined.

The Respondent, Davies Pacific Tembo Chiza, aged 33 years, of Makeni, a freelance TV Journalist gave sworn evidence, stating that he was not opposing the divorce. He however stated that the Petitioner was uncontrolled and was of stubborn character. She did not adhere to his counsel and resorted to going out and drinking alcohol. The Petitioner would return home late and would throw things at the Respondent, even in front of children. The Respondent stated that he could not take it anymore so he decided to leave the matrimonial home. He tried to make the Petitioner a better person but this did not happen. He therefore agrees that the marriage has broken down irretrievably and would like the marriage to be dissolved for the aforementioned reasons.

The Learned Counsel for the Petitioner, Mr. Kabwe submitted that there is unopposed evidence given by the Petitioner of the

Respondent's unreasonableness. The marriage has broken down irretrievably. Mr. Kabwe prayed that the court dissolves the marriage on account of the fact relied upon stated in Section 9(1)(b) of the Matrimonial Causes Act, Number 20 of 2007.

A Petition for divorce may be presented to the court by either party to the marriage on the ground that the marriage had broken down irretrievably. Section 9(1)(b) of the Matrimonial Causes Act enacts that –

“... the court hearing a Petition for divorce shall not hold the marriage to have broken down irretrievably unless the Petitioner satisfies the court...that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.”

In this case, the Petitioner narrated several instances of the Respondent's unreasonable behaviour and pleaded that as a result of that behaviour, she cannot reasonably be expected to continue living with the Respondent. In establishing whether a marriage has broken down irretrievably, the court looks at the alleged behaviour and its effect on the Petitioner. The court is called upon to consider two important elements, the behaviour of

the Respondent as alleged and the personality, disposition and behaviour of the Petitioner.

In the case of **Yoyo vs. Yoyo SCZ Judgment Number 78 of 1998**¹, the Supreme Court held that in order for a court to refuse to grant a decree for dissolution of marriage, there must be evidence of mutual love between the parties. In the case of **Malama vs. Malama, Appeal Number 84 of 2000, (unreported)**² the court held that the behaviour in question need not pose a danger to the health, or life of the Petitioner in order to establish irretrievable breakdown.

The court cannot grant a divorce unless the Petitioner proves one of the five facts set out in Section 9 of the Matrimonial Causes Act. In the case of **Katz vs. Katz (1972) 3 All ER 219**³, the husband suffered from severe manic depression. His wife petitioned for divorce on the basis of behaviour. She was so depressed by the situation that she attempted suicide. The court held that the impact on the wife was sufficiently serious to justify granting her a decree nisi. The behaviour in question should be something more than a mere state of affairs or a state of mind. In the case of **Birch vs. Birch (1908) W.N. 81, CA**⁴ it was held that-

“ Allowance will be made for the sensitive as well as the thick skinned. Conduct must be judged up to a point by the capacity of the complaining Petitioner to endure his or her spouse’s conduct, the court will consider to what extent the Respondent knew or ought to have known of that capacity.”

In the case of **Ash vs. Ash (1972)⁵ 1 ALL ER 582** the wife alleged that the husband was violent towards her when he was drunk and he admitted this. He however claimed that the marriage had not irretrievably broken down. The court said that the wife’s personality was the sort who could not be expected to live with a violent Respondent. Bagnall J suggested that violent/alcoholic or adulterous Respondents can reasonably be expected to live with their violent/alcoholic or adulterous counterparts. In the case of **O’Neill vs. O’ Neill (1975)⁶** the court held that the test to be applied as to whether the Applicant can reasonably be expected to live with the Respondent is partly objective and partly subjective. It is the duty of the court to inquire into the facts alleged to establish irretrievable breakdown of marriage. A decree for dissolution of marriage shall not be made if the court is satisfied that there is a reasonable likelihood of cohabitation being resumed.

Joseph Jackson, in Rayden's Law and Practice in Divorce and Family Matters in All Courts, Twelfth Edition, Volume 1 London, Butterworths (1974) states in paragraph 25, at page 216 that in considering what is reasonable, the court shall, in accordance with its duty make inquiries so far as it reasonably can into the facts alleged and will have regard to the history of the marriage and to the individual spouses before it, and from this point of view will have regard to this Petitioner and this Respondent, in assessing what is reasonable. Allowance will be made for the sensitive as well as for the thick skinned.

The behaviour is not confined to behaviour of the Respondent but it must have reference to the marriage and any or all behaviour must be taken into account. The court will have regard to the whole history of the matrimonial relationship. Behaviour in this context is action or conduct by the one which affects the other, it may be an act or omission or course of conduct. But it must have some reference to the marriage.

In the case of **Mahande vs. Mahande**⁷ (1976) ZR 288, the Judgment of Cullinan, AJS referred and adopted the dicta of Ormond, J. in **Pheasant vs. Pheasant** (1971) 1 All ER 58J⁸ at page 589 as follows:

“ the only ground on which a marriage may be dissolved is that the marriage has broken down irretrievably with the Petitioner satisfying the court on one or more of the five facts.”

In the present case, I am satisfied that the allegations in the Petition are established as the Petitioner was not cross examined. I therefore find that her evidence was unchallenged. I find that indeed the Respondent behaved unreasonably as he was full of tantrums and had no respect for the Petitioner. He would take female friends who were unknown to his wife at home and would humiliate her in front of these women. He would embarrass her by driving the women's cars home and leaving home at 0500 hours when the women would go to fetch him. I further find that the Respondent was not mature and would leave the matrimonial home for days whenever the parties differed and would only return days later with no explanation for his wife.

This definitely caused tension in the home which resulted in violence as the Petitioner stated that on one occasion , the Respondent beat her up severely when she questioned him about text messages that were on his phone. In the case of **Yoyo vs. Yoyo** the court held that for a marriage to continue to subsist

between the parties, there must be mutual love between them. The Respondent's behaviour in this case was not only unreasonable but was also erratic and retrogressive. He was also a violent man.

The Respondent showed signs of lack of responsibility and maturity. A married man cannot walk out of on his wife each time they are faced with a problem. I therefore form the conclusion that the marriage between the Petitioner and the Respondent has broken down irretrievably and that the Petitioner cannot reasonably be expected to live with the Respondent. The Respondent's behaviour had a serious effect on the Petitioner and it is only be fair that she he allowed to move on and live her life without being forced to continue in a marriage where there is no mutual love.

The matrimonial relationship was so strained that it deteriorated to the Respondent refusing to go for counselling and subsequently leaving the matrimonial home.

I am satisfied that the Petitioner and the Respondent were married under the Provisions of the Act and that this was therefore a statutory marriage. I find that the marriage has

broken down irretrievably on account of the Respondent's unreasonable behaviour.

I accordingly grant the parties a Decree Nisi for divorce which shall be made absolute within six weeks of the same. Enter party is at liberty to apply. I further order that this matter be referred to the Deputy Registrar for property settlement and each party to bear their costs of the action.

Delivered this 18th day of June, 2015.



**P.C.M. NGULUBE
HIGH COURT JUDGE**