

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

2014/HP/D.039

BETWEEN:

JOEL CLAUDE COLANGE

15 AUG 2016

PLAINTIFF

AND

PHARIS CHIKACHI

RESPONDENT

Before Hon. Mr. Justice M. L. Zulu in Chambers at Lusaka, theday of August, 2016

For the Petitioner: Ms. L. Zulu, Legal Aid Board

For the Respondent: Ms. W. Musukwa, Legal Aid Clinic for Women.

RULING

Legislation referred to:

- 1. Matrimonial Causes Act, No. 20 of 2007.***

This is the respondent's application for child custody pursuant to section 72 of the **Matrimonial Causes Act No. 20 of 2007.**

The application follows the judgment of the court that granted the parties a decree nisi of divorce.

In support of this application, the respondent has filed an affidavit in support. The respondent in the affidavit avers that that parties have a male child of the family namely Cholwe Caleb Colange born on November, 2004, who is living with the respondent.

The respondent's affidavit deposed that the child is in school in Kafue and would like the child to continue attending the said.

The affidavit further deposed that the petitioner, who is a French National would like to go with the child to France thereby discontinuing the child's attendance at the said school. The Respondent further deposed that she was responsible for the school fees and other financial provisions.

The petitioner filed an affidavit in opposition dated 28th July, 2016. In the said affidavit in opposition, the petitioner acknowledges that the Respondent has custody of the child of the family and alive that she is more financially stable than the petitioner, therefore with the means to take care of the child. The Petitioner in his Affidavit in Opposition seeks reasonable access to the said child of the family.

At the hearing, the parties relied on their respective affidavits. The Respondent's counsel submitted that the Petitioner has not been in employment since 2007 and therefore, would not be able to look after the child.

The petitioner's counsel reiterated what was contained in the affidavit in opposition and prayed that the Court grants the Petitioner reasonable access to the child. The Respondent's counsel in reply did not oppose the application for reasonable access to the child.

I have considered the affidavit evidence and the submissions by Counsel for the parties.

In considering Custody, the welfare of the Child is to be made paramount consideration. This is in conformity with **Article 3 of the Convention on the Rights of the Child**. This Article calls upon the parents and legal guardians to think about how their decisions will affect the children. The court is required to consider: **"Who the father is, who the Mother is; What they are prepared to do, and all the circumstances of the case...."**

From the evidence on record and submissions made by counsel for the parties, it is not in dispute that the Petitioner is not working and lacks the means to take care the Child of the family, Choolwe Caleb Colange. The Petitioner has specifically avered in his affidavit in opposition of summons for an order of Child Custody, that the Respondent is more financially stable than him. The evidence on record is that the Petitioner does not want Custody of the Child. All the Petitioner prays for is reasonable access to the Child.

It is further not in dispute that the Respondent is in custody of the child and is financially responsible for the Child's School fees and other financial provisions.


It is clear from the fore going that the Respondent has always been financially responsible for the Petitioner and the Child of the family. It has been demonstrated fully that the Petitioner has never been in any employment since the parties married and therefore, not capable of taking care of the Child.

The best interests of the Children principle does not only look at the financial standing of the parties, their status or what they can provide but demands that the children's best interests be considered holistically.

In this particular case, the Child is in School in Kafue and lives with the Respondent who is responsible for his well fare and all his needs since birth. Changing the current status quo will not be in the best interests of the Child.

From the foregoing, I am satisfied that the Respondent is better suited than the Petitioner to have Custody of Choolwe Caleb Colange. Accordingly, I grant the Respondent Custody the Child. I further order that the Petitioner shall be allowed liberal access to the Child. I make no orders as to costs.

Dated the^{15th}..... day of^{August}..... 2016



M. L. ZULU
HIGH COURT JUDGE

15 AUG 2016