

IN THE HIGH COURT FOR ZAMBIA 2017/HP/D247
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Divorce Jurisdiction)



BETWEEN:
ADINAS PHIRI

AND

MAXWELL CHISOTI

PETITIONER
RESPONDENT

Before the Honorable Mrs. Justice S.M Wanjelani this 12th day of February, 2018, in Chambers

For the Petitioner : Ms. Mulenga, Messrs Isaac and Partners
For the Respondent : In person

JUDGMENT

Legislation referred to:

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

This is a Petition for dissolution of Marriage filed on 4th October, 2017 by **Adinas Phiri**, the Petitioner, on the ground that the Marriage had broken down irretrievably as the Parties to the marriage had lived apart for a continuous period of five years. The Petition was filed pursuant to sections **8** and **9(1)(e)** of the **Matrimonial Causes Act No. of 20 of 2007** (hereinafter referred to as the "Act"). The Respondent did not file an Answer.

A hearing was called for by the Court as required by the provisions of **Section 9 (2)** of the **Act**, which state:

"(2) On a petition for divorce it shall be the duty of the Court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent."

During the hearing the Petitioner reiterated the contents of the Petition. She confirmed that she was lawfully married to **MAXWELL CHISOTI**, the Respondent, on 29th August, 1997 at the Civic Centre at Lusaka, in the Republic of Zambia, and that the marriage was registered with the Registrar of Marriages pursuant to the Marriage Act. The Petitioner identified a copy of the Marriage Certificate and tendered it as part of her evidence.

The Petitioner stated that the Parties last lived as husband and wife at Plot 33 Machili Road Kamwala, Lusaka and that they are both domiciled in the Republic of Zambia. She added that she is employed as a Procurement Specialist at the Road Development Agency while the Respondent is, as far as is known to the Petitioner, as Pastor of Praise Christian Centre.

In her further testimony, the Petitioner informed the Court that there are 4 children of the family now living, namely, **Mulombe Chisoti** aged 18 years, **Abigail Chisoti** aged 16 years, **Chisomo Chisoti** aged 14 years and **Josiah Chisoti** aged 10 years old and that no other child now living has been born to the Respondent during the marriage as far as is known to the Petitioner.

In addition, she stated that that there have been no previous proceedings in any Court of Law in Zambia or outside Zambia with reference to the marriage between the Petitioner and Respondent capable of affecting its validity or subsistence, or with reference to any property of either or both of them, nor have arrangements been made or proposed to be made for the support of the Respondent in the event of the decree nisi being granted.

In conclusion the Petitioner testified that marriage has broken down irretrievably as the Petitioner and Respondent have lived apart for continuous period of 5 years from 11th September, 2012 to date. She therefore prayed that:

- 1. the said marriage be dissolved;*
- 2. that the Parties be granted joint custody of the children of the family;*
- 3. the Court makes orders for Maintenance for the children of the family to be made by the Petitioner;*
- 4. the Court makes no orders for Property Settlement;*
- 5. that each Party to the proceedings bears its own costs; and*
- 6. any other order that the Court may deem fit.*

The Petitioner was not cross examined.

The Respondent also testified. He stated that he had been served with the Petition for the dissolution of the marriage and understood the contents. He confirmed the contents of the Petition as regards the date of the marriage, his occupation, the number of children of family, names and ages and the fact that the Parties to the marriage

have lived apart for a continuous period of over 5 years. He stated that the marriage had broken down irretrievably and also prayed that it should be dissolved.

I have considered the Petition filed in this matter and the oral evidence from the Parties before me. The only ground upon which a Petition for divorce may be presented for a statutory marriage is provided in **section 8** of the **Act** which states:

“A petition for divorce may be presented to the court by either party to the marriage on the ground that the marriage has broken down irretrievably.”

In order to prove that the marriage has broken down irretrievably, the Petitioner should satisfy the court of one or more of the facts set out in section **9 (1) (a) to (e)** of the Act. Section **9 (1) (e)** which is relevant to this Petition provides:

“9 (1) For the purposes of section eight, the court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the Petitioner satisfies the court of one or more of the following facts:

(e) that the parties to the marriage have lived apart for continuous period of at least five years immediately preceding the presentation of the petition.

It is common cause that this Petition is uncontested. Based on the facts stated in the Petition and confirmed by both the Petitioner and the Respondent in their oral testimonies, I am satisfied that the


marriage has broken down irretrievably as the Petitioner and the Respondent have lived apart for a continuous period of five (5) years immediately preceding the presentation of this Petition, that is, from 11th September, 2012 to date. Therefore I have no doubt that both Parties would like to see the marriage dissolved.

As the conditions of section **8**, and **9 (1) (e)** of the **Act**, have been met, I hereby dissolve the marriage between the Petitioner and the Respondent celebrated on the 29th August, 1997 as prayed by the Petitioner and accordingly grant a **DECREE NISI**. The **DECREE NISI** will be made absolute after determination of the custody of the children of the family, which if not settled by consent, shall be settled by either Party making an application before me at Chambers.

I further order that the issue of maintenance and property settlement, if any, be referred to the Deputy Registrar upon the filing of a formal application by either Party.

Leave to appeal is granted.

Delivered at Lusaka this 12th day of February, 2018.

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S.M WANJELANI
HIGH COURT JUDGE