

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

**2017/HPF/D289**

BETWEEN:

**MAKEDA MEERYAWN SHEBA ISRAEL**

**PETITIONER**

AND

**KWABENA MUSTAPHA OSUMAN**

**RESPONDENT**



**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 2<sup>nd</sup> DAY OF MARCH,  
2018**

*For the Petitioner : Mr R. Zambwe, BCM Legal Practitioners*

*For the Respondent : In person*

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

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LEGISLATION REFERRED TO:

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

The petition for the dissolution of marriage was filed on 20<sup>th</sup> November, 2017, pursuant to Sections 8 and 9 (1) (a) and (b) of the Matrimonial Causes Act No 20 of 2007. The petition states that the Petitioner, Makeba Meeryawn Sheba Israel was lawfully married to the Respondent, Kwabena Mustapha Osuman, on 17<sup>th</sup> February, 2012 in Ghana. That both parties are domiciled in Zambia and last lived as husband and wife at Plot No 100/37 Ibex Hill in Lusaka. It is stated that the Petitioner is unemployed, while the Respondent is the Country Director for Itsalat Universal Zambia, and that the parties are both residing at Plot No

100/37 Ibex Hill in Lusaka. That there are two children of the family now living, namely, Ezekiel Ramiel Amadu Israel Osuman, born on 3<sup>rd</sup> April, 2013, and Mustapha Israel Osuman born on 18<sup>th</sup> August, 2016.

The petition also states that there is one child now living, born to the Respondent, and that there have been no previous proceedings in any court in Zambia or elsewhere with reference to the marriage or the property of either or both of the parties. Further that no proceedings are continuing in any court outside Zambia with respect to the marriage that are capable of affecting its validity or substance.

It is also stated that no arrangements have been made for the support of the parties or the children of the family. The Petitioner contends that the marriage has broken down irretrievably, as the Respondent has committed adultery and has behaved in such a way that the Petitioner cannot reasonably be expected to live with him. The particulars of the behavior are stated as;

- a) *The Respondent having committed adultery with one Natalia and a child by the name of Charet Osuman being born therefrom.*
- b) *Throughout the marriage the Respondent has frequently displayed violent conduct and verbally abused the Petitioner.*
- c) *The Respondent has been having illicit relationships with other women who have given him children outside the marriage, making it unbearable to the Petitioner.*
- d) *The Respondent taking to heavy drinking on several occasions leading to him having a health and mental challenge.*

The Petitioner therefore prays that the marriage be dissolved, and that there be an order for joint custody of the children of the family, any other relief that the court may deem fit, and that costs be for the Petitioner.

The Respondent on 23<sup>rd</sup> November, 2017 filed an answer in which he admits that the marriage has broken down irretrievably as a result of his behavior, and that the Petitioner finds it intolerable to continue living with him. It is stated that the adultery has made it difficult for the parties to continue cohabiting as husband and wife, and that the Respondent no longer has affection for the Petitioner, and that he does not object to the marriage being dissolved.

At the hearing, Counsel for the Petitioner told the court that the Petitioner had filed an application that the court dispenses with her personal attendance that was supported by an affidavit. That the answer filed by the Respondent on 23<sup>rd</sup> November, 2017 shows that the petition is not contested, and he prayed that the order for dissolution of the marriage be granted. Further that an order for joint custody of the children of the family be granted, as well as any other relief that the court may deem fit, and costs. The Respondent stated that he would rely on his answer, and would not give oral evidence.

I have considered the matter. The petition was brought to Sections 8 and 9 (1) (a) and (b) of the Matrimonial Causes Act No 20 of 2007. On record is a certificate of marriage issued to the parties by the Principal Registrar of Marriages Office in Accra Ghana, under the Marriage Ordinance Act, Chapter 127, and I am satisfied that the marriage between the parties was contracted under the Marriage Act, and the proceedings are properly before Court.

Section 8 of the Matrimonial Causes Act No 20 of 2007 provides for the ground for dissolution of marriage. It states that;

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

Section 9 (1) of the said Act on the other provides for the facts that need to be proved in order to establish that a marriage has broken down irretrievably. It provides that;

***“9. (1) For 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.***

***(a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;***

***(b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;***

***(c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;***

***(d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to a decree being granted; or***

***(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.”***

The Petitioner relies on Section 9(1) (a) of the Act which provides that the Respondent had committed adultery, and the Petitioner finds it intolerable to live with the Respondent, and Section 9(1) (b) which provides that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him. None of the parties testified, and they relied on the petition and answer filed. The Petitioner was not before the court as the affidavit in support of the notice to dispense with her personal attendance states that she is in the United States of America for a medical check-up. Section 9 (2) of the Matrimonial Causes Act requires the court when hearing a matter to inquire, so far as it reasonably can, into the facts alleged by the petitioner, and into any facts alleged by the respondent. The first fact relied on by the Petitioner is that the Respondent has committed adultery, and she finds it intolerable to live with him.

It is stated in paragraph 11 of the petition that the Respondent has committed adultery with one Natalia and that a child Charet Osuman has been born from that adulterous relationship. Further that the Respondent has committed adultery with other women who have given him children as well. Section 12 of the Matrimonial Causes Act states that;

***“12. (1) For the purposes of paragraph (a) of subsection (1) of section nine, a petitioner shall not be entitled to rely on adultery committed by the respondent if, after it became known to the petitioner that the respondent had committed***

***adultery, the parties have lived with each other for a period exceeding, or periods together exceeding, six months.***

***(2) If the parties have lived with each other after the adultery for a period of six months or less, that time shall be disregarded in determining for the purposes of paragraph (a) of subsection (1) of section nine whether the petitioner finds it intolerable to live with the respondent.”***

Therefore, in order for the Petitioner to be successful on the fact of the Respondent having committed adultery, to establish the irretrievable breakdown of the marriage, she needs to prove that from the time she became aware of the Respondent's adultery, she has not lived with him for a period or periods exceeding six months, as this goes to proof of the fact, that she finds it intolerable to live with the Respondent. The Respondent admits to having committed the adultery. However there is no evidence on record to show that the parties have not lived together for periods exceeding six months thereby proving that the Petitioner finds it intolerable to live with the Respondent as a result. The petition just alleges the adultery but not the fact that the Petitioner finds it intolerable to live with the Respondent. The reliance on Section 9(1) (a) of the Matrimonial Causes Act shall fail, as it has not been proved.

The Petitioner also alleges that the Respondent has behaved in such a way that she cannot reasonably be expected to live with him. The particulars of the unreasonable behavior are that the Respondent has committed adultery, displayed violent behavior and is abusive to the Petitioner, and that he has taken to drinking alcohol heavily which has led to him having health and mental challenges. In the answer that was filed, the Respondent admitted those allegations.

That being the position, the Petitioner has proved that the Respondent has behaved in such a way that she cannot reasonably be expected to live with him, as it is not expected that the Petitioner can continue to live with a spouse who engages in adulterous relationships and abuses her, or drinks alcohol so heavily that it affects his mental and physical health. I accordingly find that the marriage has broken down irretrievably as the Respondent has behaved in such a way that she cannot reasonably be expected to live with him, and I grant a decree nisi for the dissolution of the said marriage.

The decree shall become absolute after a period of six weeks. The parties are at liberty to agree on the custody of the children, and file a consent order to that effect. In default thereof, an application can be made to me at chambers by either party. Issues of property settlement and maintenance are referred to the Registrar for determination. The Petitioner is awarded costs to be taxed in default of agreement.

**DATED THE 2<sup>nd</sup> DAY OF MARCH, 2018**

*S. Kaunda*

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**S. KAUNDA NEWA  
HIGH COURT JUDGE**